No. 812

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VOL. I.

TRANSCRIPT OF RECORD

UNITED STATES
COURT OF APPEALS
FIFTH CIRCUIT.

No. 16,632

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
Appellant,

versus

J. M. BROWN, JR., ET AL.,
Appellees.

Appeal from the United States District Court for the Northern District of Alabama.

(ORIGINAL RECORD RECEIVED APR. 22/57.)

COMPLAINT.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION.

Filed in Clerk's Office, Northern District of Alabama, October 25, 1955.

Civil Action No. 8171.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, a Corporation,

Plaintiff,

versus

J. M. BROWN, JR., J. B. OTTS, T. A. KENNEDY, H. M. BAUM, A. R. THOMAS, H. K. PARKER, J. M. WELDON, H. E. SOUTHERLAND, C. L. McCUTCHEON, W. L. GRISSOM, M. L. HALL, R. A. SUTTERLIN, W. C. BURNETT, and R. H. LETCHMAN, and any other person or association of persons participating in the commission of the wrongs complained of,

Defendants.

Comes the plaintiff in the above styled cause and exhibits this its complaint in said action as follows:

1. The plaintiff is a corporation organized and existing under the laws of the State of Kentucky and a resident citizen of said State Plaintiff is engaged as a common carrier by rail of Interstate Commerce and of the United States mail in and through the

Northern District of Alabama in which district it does business by Agent. The defendants are each over the age of 21 years and are resident citizens of Jefferson County, Alabama.

The amount in controversy exceeds, exclusive of interest and costs, the sum of $3,000.00 and the jurisdiction of this Court is rested upon diversity of citizenship and the amount in controversy. Jurisdiction is further rested as an independent basis thereof upon the existence of a federal question being involved in the issues between the parties as herein averred.

2. Plaintiff claims of the defendants, separately and severally, the sum of $250,000.00 damages and hereinafter sets forth in separate counts each of its causes of action as follows:

Count One.

3. Plaintiff avers that defendants are employees of the plaintiff and that there is imposed upon them and each of them by the provisions of 45 U.S.C. Sections 151, 152, et seq. the duty to exert every reasonable effort to settle all disputes between the plaintiff and its employees whether arising out of the application of previously made agreements or otherwise, in order to avoid any interruption of interstate commerce or of the operation of the business of the plaintiff as a carrier of interstate commerce.

4. Plaintiff further avers that the defendants, separately and severally, have on or about October 23, 1955, breached and utterly failed to discharge said statutory duty in that they wilfully refused to exert

any effort to settle an existing dispute but did on he contrary on or about said date without cause and excuse and without notice to plaintiff, wilfully and maliciously cause a shut-down or work stoppage on the lines of the plaintiff in Jefferson County, Alabama, resulting in a complete paralysis of plaintiff's operation as a common carrier of interstate commerce in said county and surrounding areas and that as a proximate result thereof plaintiff has been injured in the amount of, to-wit, $250,000.00 for which plaintiff makes claim of the defendants herein.

Count Two.

5. Plaintiff avers that prior to October 23, 1955 it had entered into an agreement concerning wages, hours, working conditions and other matters relating to conditions of employment of certain of its employees among whom were these defendants with a labor organization of which the defendants were on said date and prior thereto members and that the defendants had knowledge of said agreement and the terms thereof. Plaintiff avers that according to the provisions of said agreement all grievances or disputes were to be settled in a specified manner consistent with the Railway Labor Act.

And plaintiff further avers that on or about said date, the defendants conspired to and in combination did wilfully and maliciously cause or procure a breach of said agreement between plaintiff and the said labor organization in that they did on the occasion of a dispute or grievance within the scope of said agreement fail and refuse to follow specified procedure and did on the contrary render the same

impossible in that they did without notice to plaintiff and without legal cause undertake to force plaintiff to yield and forego its right to have such dispute or grievance settled as provided in said agreement and instead to submit without arbitration or hearing to the arbitrary demands of the defendants and that in furtherance of said illegal and wrongful design they did wilfully and maliciously cause a shut-down or work stoppage on the lines of the plaintiff resulting in a complete paralysis of the operations of the plaintiff as a common carrier of interstate commerce in Jefferson County, Alabama, and that the plaintiff was damaged thereby as a proximate result thereof in the amount of $250,000.00 for which plaintiff herein claims damages.

Count Three.

6. Plaintiff avers that on, to-wit, October 23, 1955 it was engaged in the lawful business of a common carrier of interstate commerce operating in Jefferson County, Alabama where it had a right to be and that it was conducting its said operation in a lawful manner. Plaintiff further avers that on or about said date, the defendants did enter into a conspiracy or combination for the purpose of hindering, delaying and preventing the plaintiff from carrying on its lawful business as a common carrier of interstate commerce in that they did wilfully and maliciously and without excuse cause a shut-down or work stoppage of the plaintiff's railroad lines resulting in a complete paralysis of the operations of the plaintiff as a common carrier of interstate commerce in Jefferson County, Alabama, and as a proximate consequence thereof, plaintiff has been damaged in the amount of

$250,000.00 for which it claims damages from the defendants.

H. G. BREETZ,
GIBSON & GIBSON,
LANGE, SIMPSON, ROBINSON & SOMERVILLE,
ROBERT McD. SMITH,
Attorneys for Plaintiff.

Of Counsel:
LANGE, SIMPSON, ROBINSON & SOMERVILLE,
1023 Frank Nelson Building,
Birmingham, Alabama.

GIBSON & GIBSON,
Comer Building,
Birmingham, Alabama.

Plaintiff demands a jury for the trial of all issues of fact arising in this cause.

ROBERT McD. SMITH,
Attorney for Plaintiff.

AMENDMENT TO THE COMPLAINT.

Filed October 27, 1955.

(Title Omitted.)

Leave of Court being first had, the plaintiff amends the complaint by striking therefrom as a party defendant, W. C. Burnett.

H. G. BREETZ,
(H. G. Breetz),
ROBERT McD. SMITH,
(Robert McD. Smith),
GIBSON & GIBSON,
(Gibson & Gibson),
LANGE, SIMPSON, ROBINSON & SOMMERVILLE,
(Lange, Simpson, Robinson & Somerville),
Attorneys for Plaintiff.

Certificate of Service.

A copy of the foregoing amendment has been served by mail upon Honorables Macey Taylor and Erle Pettus, Jr., attorneys for defendants.

J. A. SIMPSON,
Attorney for Plaintiff.

AMENDMENT TO THE COMPLAINT.

Filed Nov. 9, 1955.

(Title Omitted.)

Leave of the Court first being had, the plaintiff amends the complaint by striking therefrom as a party defendant, J. B. Otts, and by adding thereto as a party defendant, J. B. Otts, Jr.

H. G. BREETZ,
(H G. Bretz),
ROBERT McD. SMITH,
(Robert McD. Smith),
GIBSON & GIBSON,
(Gibson & Gibson),
LANGE, SIMPSON, ROBINSON & SOMERVILLE,
(Lange, Simpson, Robinson & Somerville),
Attorneys for Plaintiff.

Of Counsel:
LANGE, SIMPSON, ROBINSON & SOMERVILLE,
1023 Frank Nelson Building,
Birmingham, Alabama.

GIBSON & GIBSON,
Comer Building,
Birmingham, Alabama.

Certificate of Service.

A copy of the foregoing amendment has been served by mail upon Honorables Macey Taylor and Earle Pettus, Jr., attorneys for defendants.

ROBERT McD. SMITH,
Attorney for Plaintiff.

MOTION TO DISMISS.

Filed Nov. 14, 1955.

(Title Omitted.)

Comes the defendant, J. M. Brown, Jr., by his attorneys and moves to dismiss the complaint and the complaint as amended in said cause filed and each count thereof, separately and severally, on the ground that same fails to state a claim against the defendant upon which relief can be granted.

JACKSON, RIVES, PETTUS & PETERSON,
By ERLE PETTUS, JR.,
As Attorneys for the Defendant, J. M. Brown, Jr.

Certificate of Service.

I hereby certify that a copy of the foregoing motion to dismiss has this day been mailed postage prepaid to Mr. James A. Simpson, as Attorney for the Plaintiff.

This the 14 day of November, 1955.

ERLE PETTUS, JR.,
Attorney for the Defendant,
J. M. Brown, Jr.

MOTION TO DISMISS.

Filed Nov. 14, 1955.

(Title Omitted.)

Comes the defendant, T. A. Kennedy, by his attorneys and moves to dismiss the complaint and the complaint as amended in said cause filed and each count thereof, separately and severally, on the ground that same fails to state a claim against the defendant upon which relief can be granted.

JACKSON, RIVES, PETTUS & PETERSON,
By ERLE PETTUS, JR.,
Attorneys for the Defendant,
T. A. Kennedy.

Certificate of Service.

I hereby certify that a copy of the foregoing motion to dismiss has this day been mailed postage prepaid to Mr. James A. Simpson, as Attorney for the Plaintiff.

This the 14 day of November, 1955.

ERLE PETTUS, JR.,
Attorney for the Defendant,
T. A. Kennedy.

MOTION TO DISMISS.

Filed Nov. 14, 1955.

(Title Omitted.)

Comes the defendant, J. B. Otts, Jr., by his attorneys and moves to dismiss the complaint and the complaint as amended in said cause filed and each count thereof, separately and severally, on the ground that same fails to state a claim against the defendant upon which relief can be granted.

JACKSON, RIVES, PETTUS & PETERSON,
By ERLE PETTUS, JR.,
Attorneys for the Defendant,
J. B. Otts, Jr.

Certificate of Service.

I hereby certify that a copy of the foregoing motion to dismiss has this day been mailed postage prepaid to Mr. James A. Simpson, as Attorney for the Plaintiff.

This the 14 day of November, 1955.

ERLE PETTUS, JR.,
Attorney for the Defendant,
J. B. Otts.

MOTION TO DISMISS.

Filed Nov. 14, 1955.

(Title Omitted.)

Comes the defendant, H. K. Parker, by his attorneys and moves to dismiss the complaint and the complaint as amended in said cause filed and each count thereof, separately and severally, on the ground that same fails to state a claim against the defendant upon which relief can be granted.

JACKSON, RIVES, PETTUS & PETERSON,
By ERLE PETTUS, JR.,
Attorneys for the Defendant,
H. K. Parker.

Certificate of Service.

I hereby certify that a copy of the foregoing motion to dismiss has this day been mailed postage prepaid to Mr. James A. Simpson, as Attorney for the Plaintiff.

This the 14 day of November, 1955.

ERLE PETTUS, JR.,
Attorney for the Defendant,
H. K. Parker.

MOTION TO DISMISS.

Filed Nov. 14, 1955.

(Title Omitted.)

Comes the defendant, J. M. Weldon, by his attorneys and moves to dismiss the complaint and the complaint as amended in said cause filed and each count thereof, separately and severally, on the ground that same fails to state a claim against the defendant upon which relief can be granted.

JACKSON, RIVES, PETTUS & PETERSON,
By ERLE PETTUS, JR.,
Attorneys for the Defendant,
J. M. Weldon.

Certificate of Service.

I hereby certify that a copy of the foregoing motion to dismiss has this day been mailed postage prepaid to Mr. James A. Simpson, as Attorney for the Plaintiff.

This the 14 day of November, 1955.

ERLE PETTUS, JR.,
Attorney for the Defendant,
J. M. Weldon.

MOTION TO DISMISS.

Filed Nov. 14, 1955.

(Title Omitted.)

Comes the defendant, H. E. Southerland, by his attorneys and moves to dismiss the complaint and the complaint as amended in said cause filed and each count thereof, separately and severally, on the ground that same fails to state a claim against the defendant upon which relief can be granted.

JACKSON, RIVES, PETTUS & PETERSON,
By ERLE PETTUS, JR.,
Attorneys for the Defendant,
H. E. Southerland.

Certificate of Service.

I hereby certify that a copy of the foregoing motion to dismiss has this day been mailed postage prepaid to Mr. James A. Simpson, as Attorney for the Plaintiff.

This the 14 day of November, 1955.

ERLE PETTUS, JR.,
Attorney for the Defendant,
H. E. Southerland.

MOTION TO DISMISS.

Filed Nov. 14, 1955.

(Title Omitted.)

Comes the defendant, C. L. McCutcheon, by his attorneys and moves to dismiss the complaint and the complaint as amended in said cause filed and each count thereof, separately and severally, on the ground that same fails to state a claim against the defendant upon which relief can be granted.

JACKSON, RIVES, PETTUS & PETERSON,
By ERLE PETTUS, JR.,
Attorneys for the Defendant,
C. L. McCutcheon

Certificate of Service.

I hereby certify that a copy of the foregoing motion to dismiss has this day been mailed postage prepaid to Mr. James A. Simpson, as Attorney for the Plaintiff.

This the 14 day of November, 1955.

ERLE PETTUS, JR.,
Attorney for the Defendant,
C. L. McCutcheon

MOTION TO DISMISS.

Filed Nov. 14, 1955.

(Title Omitted.)

Comes the defendant, W. L. Grissom, by his attorneys and moves to dismiss the complaint and the complaint as amended in said cause filed and each count thereof, separately and severally, on the ground that same fails to state a claim against the defendant upon which relief can be granted.

JACKSON, RIVES, PETTUS & PETERSON,
By ERLE PETTUS, JR.,
Attorneys for the Defendant,
W. L. Grissom.

Certificate of Service.

I hereby certify that a copy of the foregoing motion to dismiss has this day been mailed postage prepaid to Mr. James A. Simpson, as Attorney for the Plaintiff.

This the 14 day of November, 1955.

ERLE PETTUS, JR.,
Attorney for the Defendant,
W. L. Grissom.

MOTION TO DISMISS.

Filed Nov. 14, 1956.

(Title Omitted.)

Comes the defendant, M. L. Hall, by his attorneys and moves to dismiss the complaint and the complaint as amended in said cause filed and each count thereof, seperately and severally, on the ground that same fails to state a claim against the defendant upon which relief can be granted.

JACKSON, RIVES, PETTUS & PETERSON,
By ERLE PETTUS, JR.,
Attorneys for the Defendant,
M. L. Hall.

Certificate of Service.

I hereby certify that a copy of the foregoing motion to dismiss has this day been mailed postage prepaid to Mr. James A. Simpson, as Attorney for the Plaintiff.

This the 14 day of November, 1956.

ERLE PETTUS, JR.,
Attorney for the Defendant,
M. L. Hall.

MOTION TO DISMISS.

Filed Nov. 14, 1955.

(Title Omitted.)

Comes the defendant, R. A. Sutterlin, by his attorneys and moves to dismiss the complaint and the complaint as amended in said cause filed and each count thereof, separately and severally, on the ground that same fails to state a claim against the defendant upon which relief can be granted.

JACKSON, RIVES, PETTUS & PETERSON,
By ERLE PETTUS, JR.,
Attorneys for the Defendant,
R. A. Sutterlin.

Certificate of Service.

I hereby certify that a copy of the foregoing motion to dismiss has this day been mailed postage prepaid to Mr. James A. Simpson, as Attorney for the Plaintiff.

This the 14 day of November, 1955.

ERLE PETTUS, JR.,
Attorney for the Defendant,
R. A. Sutterlin.

MOTION TO DISMISS.

Filed November 14, 1955.

(Title Omitted.)

Now come the Defendants, H. M. Baum and R. H. Letchman, by and through their attorney, R Macey Taylor, and hereby present to the Court their motion to dismiss the complaint filed herein and each paragraph thereof separately and eeverally and as grounds therefor assign the following separately and severally:

1. The Complaint fails to state a cause of action for which relief may be granted.

2. The Complaint is vague and uncertain.

3. The Complaint does not apprise the Defendants, with sufficient clarity, of the charge they are called upon to defend.

4. The action is capricious.

5. Plaintiff's allegation that the Defendants breached a statutory duty is but a conclusion of the Plaintiff.

6. For aught that appears in the Complaint, the Defendants have in every respect discharged the duty imposed upon them by the provisions of 45 USC Section 151, 152, et seq.

7. The Complaint fails to allege any facts which constitute a breach of any statutory duty imposed on the Defendants.

8. For aught that appears in the Complaint, the Plaintiff has failed to discharge the duty imposed upon the Plaintiff by the provisions of 45 USC Section 151, 152, et seq.

9. It affirmatively appears from the Complaint that the Plaintiff has failed to discharge the statutory duty imposed upon it by the provisions of 45 USC 151, 152 and 156.

10. The allegaion that the Defendants conspired to and in combination did willfully and maliciously procure a breach of an agreement is a mere conclusion of the pleader and is not supported by any factual averment.

11. There are no facts alleged in the Complaint which disclose any duty of the Defendants to the Plaintiff, the breach of which would render the Defendants liable to the Plaintiff.

12. There are no facts alleged in the Complaint alleging a breach of any duty owed by the Defendants to the Plaintiff.

13. The Complaint fails to allege that the Defendants combined for the accomplishment of an unlawful purpose.

14. The Complaint fails to allege that the Defendants combined for the purpose of accomplishing a purpose, not in itself unlawful, by unlawful means.

15. The Complaint fails to contain allegation of facts justifying a legal conclusion of unlawful conspiracy.

16. The Complaint fails to accurately describe the alleged illegal purpose or means which the alleged conspirators meant to accomplish or resort to.

17. It appears from the allegations contained in the Complaint that the Plaintiff has an adequate remedy under the Railway Labor Act, Title 45 USC Section 153 et seq.

18. For aught that appears in the Complaint, the National Railroad Adjustment Board has exclusive jurisdiction over the dispute alleged to exist by the Plaintiff.

19. It affirmatively appears from the Complaint that the Plaintiff has not exhausted its administrative remedies.

R. MACEY TAYLOR,
(R. Macey Taylor),
Attorney for H. M. Baum
and R. H. Letchman.

Certificate of Service.

I certify that I have this 14th day of November, 1955, served a copy of the foregoing Motion on Robert

McDavid Smith, Esq., one of the attorneys for the Plaintiff, by delivering a copy to his office.

R. MACEY TAYLOR,
(R. Macey Taylor),
Attorney for H. M. Baum
and R. H. Letchman.

MOTION TO DISMISS.

Filed November 17, 1955.

(Title Omitted.)

Now comes the Defendant, A. R. Thomas, by and through his attorney, R. Macey Taylor, and hereby presents to the Court his motion to dismiss the complaint filed herein and each paragraph thereof separately and severally and as grounds therefor assign the following separately and severally:

1. The Complaint fails to state a cause of action for which relief may be granted.

2. The Complaint is vague and uncertain.

3. The Complaint does not apprise the Defendant, with sufficient clarity of the charge he is called upon to defend.

4. The action is capricious.

5. Plaintiff's allegation that the Defendant breached a statutory duty is but a conclusion of the Plaintiff.

6. For aught that appears in the Complaint, the Defendant has in every respect discharged the duty imposed upon him by the provisions of 45 USC Section 151, 152, et seq.

7. The Complaint fails to allege any facts which constitute a breach of any statutory duty imposed on the Defendant.

8. For aught that appears in the Complaint, the Plaintiff has failed to discharge the duty imposed upon the Plaintiff by the provisions of 45 USC Section 151, 152, et seq.

9. It affirmatively appears from the Complaint that the plaintiff has failed to discharge the statutory duty imposed upon it by the provisions of 45 USC 151, 152 and 156.

10. The allegation that the Defendant conspired to and in combination did willfully and maliciously procure a breach of an agreement is a mere conclusion of the pleader and is not supported by any factual averment.

11. There are no facts alleged in the Complaint which disclose any duty of the Defendant to the Plaintiff, the breach of which would render the Defendant liable to the Plaintiff.

12. There are no facts alleged in the Complaint alleging a breach of any duty owed by the Defendant to the Plaintiff.

13. The Complaint fails to allege that the Defendant combined for the accomplishment of an unlawful purpose.

14. The Complaint fails to allege that the Defendant combined for the purpose of accomplishing a purpose, not in itself unlawful, by unlawful means.

15. The Complaint fails to contain allegation of facts justifying a legal conclusion of unlawful conspiracy.

16. The Complaint fails to accurately describe the alleged illegal purpose or means which the alleged conspirators meant to accomplish or resort to.

17. It appears from the allegations contained in the Complaint that the Plaintiff has an adequate remedy under the Railway Labor Act, Title 45 USC Section 153 et seq.

18. For aught that appears in the Complaint, the National Railroad Adjustment Board has exclusive jurisdiction over the dispute alleged to exist by the Plaintiff.

19. It affirmatively appears from the Complaint that the Plaintiff has not exhausted its administrative remedies.

R. MACEY TAYLOR,
(R. Macey Taylor),
Attorney for A. R. Thomas.

Certificate of Service.

I certify that I have this 17th day of November, 1955, served a copy of the foregoing Motion on Robert McDavid Smith, Esq., one of the attorneys for the Plaintiff, by delivering a copy to his office.

R. MACEY TAYLOR,
(R. Macey Taylor),
Attorney for A. R. Thomas.

ORDER ON MOTIONS TO DISMISS.

(Title Omitted.)

Defendants' separate and several motions to dismiss the complaint, as amended, came on for hearing on December 9, 1955. Oral arguments were made at that time, and the Court has since received and carefully considered briefs supporting and in opposition to defendants' said motions.

Under Count One of the complaint, as amended, plaintiff avers that the "defendants are its employees" and are subject to the duties imposed by the provisions of 45 U.S.C.A., Section 151 et seq.; that the defendants have breached said statutory duty in that "they willfully refused to exert any effort to settle an existing dispute" but, on the contrary, willfully and maliciously caused a shutdown or work stoppage on plaintiff's railway lines.

Under Count Two, plaintiff avers that prior to October 23, 1955, "it had entered into an agreement con-

erning wages, hours, working conditions, and other matters relating to conditions of employment of certain of its employees, among whom were the defendants, with a labor organization." Plaintiff further avers that, "according to the provisions of said agreement, all grievances or disputes were to be settled in a specified manner consistent with the Railway Labor Act"; that the defendants conspired and did "willfully and maliciously cause or procure a breach of the agreement between the plaintiff and said labor organization, in that the defendants did, on the occasion of the dispute or grievance within the scope of said agreement, fail and refuse to follow the procedure specified therein," and did willfully and maliciously cause a work stoppage on plaintiff's railway lines.

Under Count Three of the complaint, as amended, plaintiff avers that the defendants entered into a conspiracy for the purpose of hindering or delaying and preventing plaintiff from carrying on its lawful business as a common carrier.

The only relief sought is the recovery of damages.

Following a review of the numerous authorities, and after due consideration, the Court is of the opinion that the defendants' separate and several motions to dismiss are well taken as to Counts One and Two. The Court's conclusion in this respect appears to be clearly sustained by Slocum v. Delaware L. & W. R. Co., 339 U.S. 239, 70 S. Ct. 577; Brotherhood of Locomotive Firemen and Enginemen v. Central of Ga. Ry. Co., 5 Cir., 1962, 190 F. 2d 384; Alabaugh v. Baltimore & Ohio R. Co. and Brotherhood of Loco-

motive Engineers, 4 Cir., 1955, 222 F. 2d 861; Thompson v. St. Louis-San Francisco Ry. Co., N.D.Ala. S.D., Lyne, 1953, 113 F. Supp. 900; and Davis v. Southern Ry Co., 256 Ala. 202, 54 So. 2d 306.

The invocation of a statutory duty or the seeking of equitable relief does not take the case out of the Railway Labor Act, Alabaugh v. Baltimore & Ohio R. Co. and Brotherhood of Locomotive Engineers, supra, nor does the fact that damages only are sought. Davis v. Southern Ry. Co., supra. In the latter case the Supreme Court of Alabama very aptly observed:

". . . The appellant in this case while seeking damages only is still in the employment of the railroad and before damages can be awarded to him the existing bargaining agreement governing the class to which appellant belongs must be interpreted" (p. 205.)

In Brotherhood of Locomotive Firemen and Enginemen v. Central of Georgia Ry. Co., supra, a decree was sought enjoining appellees from a further violation of the Railway Labor Act, 45 U.S.C.A., Section 151 et seq. In denying relief, the Court, in an opinion by Circuit Judge Holmes, concluded:

"Only after the Adjustment Board has acted can it definitely appear that relief by the Courts is necessary to insure compliance with the statute. Order of Conductors v. Pitney, 326 U.S. 561, 66 S. Ct. 322, 90 L. Ed. 318"

The averments of Count Three are meager but, in the Court's opinion, state a cause of action under

the Alabama statute and the common law In the present posture of the case the motion to dismiss should be overruled as to Count Three.

It is, therefore, Ordered, Adjudged and Decreed as follows:

That the defendants' separate and several motions to dismiss addressed to Counts One and Two of the complaint, as amended, be and same are hereby granted and said counts be and same hereby are dismissed, without prejudice, however, to any proceedings before the Railway Adjustment Board or proceedings seeking appropriate relief by the Courts following review by that Board.

It is further Ordered, Adjudged and Decreed that the defendants' separate and several motions to dismiss addressed to Count Three of the complaint, as amended, be and they are hereby overruled.

Done and ordered, this the 30 day of December, 1955.

H. H. GROOMS,
Judge.

MOTION FOR JUDGMENT ON THE PLEADINGS.

Filed January 4, 1956.

(Title Omitted.)

Come the defendants, J. M. Brown, Jr., J. B. Otts, Jr., T. A. Kennedy, H. K. Parker, J. M. Weldon, H.

E. Southerland, C. L. McCutcheon, W. L. Grissom, M. L. Hall and R. A. Sutterlin, separately and severally, by their attorneys and hereby move the Court under Rule 12 and other applicable rules of the Federal Rules of Civil Procedure to enter judgment on the pleadings for said defendants and against plaintiff dismissing said complaint, as amended, for lack of jurisdiction

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
FRANK O. BURGE, JR.,
(Frank O. Burge, Jr.),
Attorneys for Defendants,
J. M. Brown, Jr., J. B. Otts, Jr., T. A. Kennedy, H. K. Parker, J. M. Weldon, H. E. Southerland, C. L. McCutcheon, W. L. Grissom, M. L. Hall and R. A. Sutterlin.

Of Counsel:
JACKSON, RIVES, PETTUS & PETERSON.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been mailed postage prepaid to James A. Simpson, Esq., c/o Messrs. Lange, Simpson, Robinson & Somerville, Frank Nelson Building, Birmingham, Alabama, as attorney for plaintiff.

This 4 day of January, 1968.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for said Defendants.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been mailed postage prepaid to R. Macey Taylor, Esq., Frank Nelson Building, Birmingham, Alabama, as attorney for defendants, H. M. Baum, A. R. Thomas and R. H. Letchman.

This 4 day of January, 1956

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for said Defendants.

ANSWER AND DEFENSE.

Filed January 4, 1956.

(Title Omitted.)

Come J. M. Brown, Jr., J. B. Otts, Jr., T. A. Kennedy, H. K. Parker, J. M. Weldon, H. E. Southerland, C. L. McCutcheon, W. L. Grissom, M. L. Hall and R. A. Sutterlin, separately and severally, defendants in the above styled cause by their attorneys and for answer and defense to the complaint as amended set down the following, separately and severally, to-wit:

First Defense.

The complaint, as amended, fails to state a claim upon which relief can be granted.

Second Defense.

The complaint, as amended, fails to state a claim upon which relief can be granted for that said complaint fails to allege prior resort to and exhaustion of its administrative remedy by plaintiff.

Third Defense.

The complaint, as amended, fails to state a claim upon which relief can be granted for that said complaint fails to allege that plaintiff has made prior resort to the National Railroad Adjustment Board.

Fourth Defense.

Defendants aver that at all times as alleged in the complaint, as amended, plaintiff was a railroad carrier and the defendants were employees of said plaintiff carrier subject to the Railway Labor Act and defendants aver that the dispute or controversy as alleged in the complaint, as amended, between plaintiff carrier and its employees, defendants herein, is within the primary exclusive jurisdiction of the National Railroad Adjustment Board under the Railway Labor Act and that this Court has no jurisdiction of said dispute or controversy until plaintiff has exhausted its remedy before said National Railroad Adjustment Board.

Fifth Defense.

Defendants aver that at all times as alleged in the complaint, as amended, defendants were employees of plaintiff carrier subject to the Railway Labor Act

under a collective bargaining agreement, a copy of which is hereto attached and marked Exhibit A and made a part hereof as if fully set forth herein; and defendants aver that on or about, to-wit, October 23, 1955, a shut down or work stoppage occurred on plaintiff carrier's lines in Jefferson County, Alabama, as a spontaneous demonstration by about 2500 employees of said plaintiff carrier and defendants aver, upon information and belief, that such demonstration indicated disapproval of an order published by plaintiff a few days prior thereto abolishing the jobs of hostler helpers in plaintiff's Boyles Yard at Birmingham, Alabama, contrary to the provisions of said collective bargaining agreement and contrary to the provisions of the Railway Labor Act, as amended; and defendants aver that the dispute or controversy between plaintiff and defendants is within the primary exclusive jurisdiction of the National Railroad Adjustment Board and this Court has no jurisdiction thereof until plaintiff has exhausted said administrative remedy.

Sixth Defense.

Defendants aver that at all times as alleged in the complaint, as amended, defendants were employees of plaintiff subject to the Railway Labor Act under a collective bargaining agreement, a copy of which is attached hereto as Exhibit A; and defendants aver that on or about, to-wit, October 23, 1955, a shut down or work stoppage occurred on plaintiff's lines (which is the same as the shut down or work stoppage referred to in dismissed Counts One and Two) as a spontaneous demonstration against plaintiff's abolition of certain hostler helper jobs at Birmingham,

Alabama, and defendants deny, separately and severally, any participation in causing said work stoppage which defendants are informed was a spontaneous protest against arbitrary unilateral action of plaintiff carrier in abolishing the craft of hostler helpers in Birmingham contrary to the provisions of said collective bargainng agreement and the provsions of the Railway Labor Act, as amended, and defendants aver that this matter is within the exclusive primary jurisdiction of the National Railroad Adjustment Board.

Seventh Defense.

Defendants aver that at all times alleged in the complaint, as amended, defendants were employees of plaintiff which is a common carrier engaged in interstate commerce subject to the Railway Labor Act and defendants aver that the Court has no jurisdiction of this cause for that plaintiff has failed to exhaust its administrative remedy before the National Railroad Adjustment Board under the Railway Labor Act and defendants, separately and severally, deny each and every allegation of the complaint, as amended, not expressly admitted in this defense.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
FRANK O. BURGE, JR.,
Attorneys for Defendants, J. M. Brown, Jr., J. B. Otts, Jr., T. A. Kennedy, H. K. Parker, J. M. Weldon, H. E. Southerland, C. L. McCutcheon, W. L. Grissom, M. L. Hall and R. A. Sutterlin.

Of Counsel:
JACKSON, RIVES, PETTUS &
PETERSON.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been mailed postage prepaid to James A. Simpson, Esq., c/o Messrs. Lange, Simpson, Robinson, & Somerville, Frank Nelson Building, Birmingham, Alabama, as attorney for plaintiff.

This 4th day of January, 1956.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for said Defendants.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been mailed postage prepaid to R. Macey Taylor, Esq., Frank Nelson Building, Birmingham, Alabama, as attorney for defendants, H. M. Baum, A. R. Thomas and R. H. Letchman.

This 4th day of January, 1956

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for said Defendants.

MOTION FOR JUDGMENT ON THE PLEADINGS.

Filed Jan. 6, 1956.

(Title Omitted.)

Come the Defendants, H. M. Baum, A. R. Thomas and R. H. Letchman, separately and severally, by their attorney, R. Macey Taylor, and hereby move the Court under Rule 12, Federal Rules of Civil Procedure, to enter judgment on the pleadings for said Defendants and against Plaintiff, and as grounds therefor assign the following:

1. It affirmatively appears from the pleadings in this cause that the Court is without jurisdiction to adjudicate the claim stated in the Complaint, as amended.

R. MACEY TAYLOR,
(R. Macey Taylor),
Attorney for Defendants,
H. M. Baum, A. R.
Thomas and R. H. Letchman.

Certificate of Service.

I, R. Macey Taylor, certify that I have served a copy of the foregoing motion on Robert McDavid Smith, Esq., one of the attorneys for the Plaintiff, by delivering a copy of same to his office on the 5th day of January, 1956.

R. MACEY TAYLOR,
(R. Macey Taylor),
Attorney for said Defendants.

I, R. Macey Taylor, certify that I have served a copy of the foregoing motion on Erle Pettus, Jr., Esq., Massey Building, Birmingham, Alabama, as attorney for Defendant J. M. Brown, Jr., et al., on this 5th day of January, 1956.

R. MACEY TAYLOR,
(R. Macey Taylor),
Attorney for said Defendants.

ANSWER.

Filed Jan. 6, 1956.

(Title Omitted.)

Now come the Defendants, H. M. Baum, A. R. Thomas and R. H. Letchman, and for Answer to the Complaint, as amended, filed herein, separately and severally, show unto the Court the following as Answer to Count 3 of said Complaint, Counts 1 and 2 having heretofore been dismissed by this Honorable Court.

1. The Defendants admit that they are citizens of Jefferson County, Alabama, and that the Plaintiff is a corporation organized and existing under the laws in the State of Kentucky and a resident citizen of said state; that the Plaintiff is engaged as a common carrier by rail of Interstate Commerce in and through the Northern District of Alabama.

2. The Defendants, separately and severally, deny each and every allegation contained in Count 3 of the

Complaint, as amended, except those which are expressly admitted in this their answer.

3. The Defendants, separately and severally, deny that they or any of them, at the time and place alleged in Count 3 of the Complaint, as amended, entered into a conspiracy or combination for the purpose of hindering, delaying, and preventing the Plaintiff from carrying on its lawful business.

4. The Defendants, separately and severally, deny that at the time and place alleged in Count 3 of the Complaint, as amended, they caused a shutdown or work stoppage of the Plaintiff's railroad lines.

5. Defendants deny that the Plaintiff has suffered any damages as a proximate consequence of any act alleged to have been done by the Defendants at the time and place alleged in Count 3 of the Complaint, as amended.

6. The Complaint, as amended, fails to State a claim upon which relief can be granted.

Affirmative Defenses.

Having answered each and every material allegation which remains in the Complaint, as amended, filed by the Plaintiff in this cause, the Defendants, separately and severally, hereby show unto the Court the following affirmative defenses:

7. Defendants, separately and severally, allege that on October 23, 1958, the Defendants were employees of the L. & N. Railroad Company, the Plain-

tiff in this cause. The Defendants, separately and severally, further allege that each of them continued to be employees of the Plaintiff continuously from October 22, 1955, up to the date of the filing of this Answer; that the Defendants, separately and severally, are now employees of the Plaintiff and will continue to be employees of the Plaintiff. Defendants, separately and severally, further allege that on or about October 22, 1955, the Plaintiff breached the Collective Bargaining Agreement which was then in force between the Plaintiff and its employees by abolishing a Craft of workers without giving the notice required by said Collective Bargaining Agreement and by 45 U.S.C. 151 et seq. The aforesaid Collective Bargaining Agreement has been attached to the Answer filed by the other Defendants in this cause and its provisions are incorporated herein, by reference, as if set out completely. The Defendants, separately and severally, allege that on or about October 22, 1955, approximately 2500 employees of the Plaintiff, spontaneously and without coercion or direction failed to report to their assigned duties as a protest of the Plaintiff's unjustified breach of the Collective Bargaining Agreement as aforesaid. Defendants allege that the aforesaid dispute between the Plaintiff and the Defendants, who are employees of the Plaintiff, is subject to the exclusive primary jurisdiction of the National Railroad Adjustment Board.

8. Defendants separately and severally, say as a defense to the claim made by the Plaintiff in Count 2, as amended, that during the period October 22, 1955, to October 28, 1955, during which period of time the Defendants are informed a work stoppage existed

at the Boyles Shop of the Plaintiff, that neither of them entered into any conspiracy or confederation or combination with any person named as a Defendant or any other person, that during said period of time the Defendants committed no illegal acts, did not threaten, coerce, or intimidate any person, did not persuade, induce, or otherwise prevent any employee of the Plaintiff from performing his assigned duties.

9. Defendants, separately and severally, say that during the period of the work stoppage which occurred at the Boyles Shop of the Plaintiff during the period of [illegible] October 28, 1966, to October 30, 1966, the Defendants and each of them reported to the Boyles Shop of the Plaintiff at the time their respective shifts were scheduled to commence work. Defendants further allege that on each of the said occasions they found the Boyles Shop of the Plaintiff closed and shutdown with no employees working and with no officials of the Plaintiff working and that at said time and place there was no work available for the Defendants to perform. Defendants further allege that they did not participate in any work stoppage except to the extent of individually deciding not to enter the Boyles Shop of the Plaintiff when it was apparent that no work was being performed and that no employees of the Plaintiff were working.

10. Defendants, separately and severally, allege that the work stoppage referred to in Count 3 of the Complaint, as amended, is the same dispute or grievance referred to in Count 1 and 2 of the Complaint, as amended, which have been dismissed by previous order of this Court; that said dispute between the Plaintiff and its employees is governed by

the provisions of the Railway Labor Act; that the Court is without jurisdiction until the Plaintiff has exhausted its administrative remedy.

11. Defendants allege that this Court does not have jurisdiction to adjudicate the claim stated by the Plaintiff in Count 3 of the Complaint, as amended, for that it affirmatively appears that the said claim is governed by the provisions of the Railway Labor Act and pursuant to the provision of said act, Plaintiff is required to seek administrative relief before invoking the jurisdiction of the Court and that the Plaintiff has failed to obtain administrative determination of the claim stated in Count 3 of the Complaint, as amended.

R. MACEY TAYLOR,
(R. Macey Taylor),
Attorney for Defendants,
H. M. Baum, A. R.
Thomas and R. H.
Letchman.

Certificate of Service.

I, R. Macey Taylor, certify that I have served a copy of the foregoing Answer on Robert McDavid Smith, Esq., one of the attorneys for the Plaintiff, by delivering a copy of same to his office on the 9th day of January, 1958.

R. MACEY TAYLOR,
(R. Macey Taylor).

I, R. Macey Taylor, certify that I have served a copy of the foregoing motion on Erle Pettus, Jr., Esq., Massey Building, Birmingham, Alabama, as attorney

for Defendant J. M. Brown, Jr., et al., on this 5th day of January, 1956.

R. MACEY TAYLOR,
(R. Macey Taylor).

REQUEST FOR ADMISSIONS.

Filed January 6, 1956.

(Title Omitted.)

Now come the Defendants, H. M. Baum, A. R. Thomas and R. H. Letchman, by and through their attorney, R. Macey Taylor, and pursuant to the provisions of Rule 36, Rules of Civil Procedure, request the Plaintiff within 10 days after service of this request, to make the following Admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial.

1. That each of the following statements is true.

a. H. M. Baum, A. R. Thomas and R. H. Letchman were employees of the Plaintiff on October 22, 1955.

b. H. M. Baum, A. R. Thomas and R. H. Letchman have been continuously employed by Plaintiff from October 22, 1955, to the date hereof and are now employed by the Plaintiff.

c. All of the persons whose names appear in the Complaint, as amended, as Defendants in this cause

were employees of the Plaintiffs on October 23, 1955; have been since October 23, 1955, continuously employed by the Plaintiff and are now employees of the Plaintiff.

d. At all times referred to in the Complaint, as amended, the Plaintiff was, and is now, an interstate railroad carrier.

e. The allegations of Count 3 of the Complaint as amended, in words and figures as follows:

"* * * in that they did willfully and maliciously and without excuse cause a shut-down or work stoppage of the plaintiff's railroad lines resulting in a complete paralysis of the operation of the plaintiff as a common carrier of interstate commerce in Jefferson County, Alabama, * * *."

refers to the same defendants, the same time, place and circumstances and the same acts allegedly performed by said defendants as the allegations in Counts 1 and 2 of the Complaint, as amended, which allege that:

"* * *the defendants* * *did* * * willfully and maliciously cause a shut-down or work stoppage on the lines of the plaintiff in Jefferson County, Alabama, resulting in a complete paralysis of the operations of the plaintiff as a common carrier of interstate commerce in Jefferson County Alabama * * *."

f. The work stoppage referred to in Count 3 of the Complaint, as amended, is the same work stoppage

referred to in Counts 1 and 2 of the Complaint, as amended.

g. The collective bargaining agreement referred to in Count 2 of the Complaint, as amended, which provides for the [illegible] of the persons named as defendants in Count 2 of the Complaint, as amended, was in force and effect at all times referred to, and involved in Count 2 of the Complaint, as amended, and said collective bargaining agreement provides for the cessation of employment of the persons named as defendants in Count 2 of the Complaint, as amended.

h. The acts of the persons named as defendants in Count 2 of the Complaint, as amended, which are alleged to constitute a breach of the collective bargaining agreement in force between the Plaintiff and certain of its employees among whom are the persons named as defendants in all counts of the Complaint, as amended, are the same acts as those performed by the persons named as defendants in Count 3 of the Complaint, as are also set out by the plaintiff for its claim which is stated in Count 3 of the Complaint, as amended.

R. MACEY TAYLOR,
(R. Macey Taylor),
Attorney for Defendants, E. M. Berry, A. R. Thomas and R. H. Letchmore.

Certificate of Service.

I, R. Macey Taylor, certify that I have served a copy of the foregoing response to admissions on Robert McDavid Jones, Esq., counsel for plaintiff for the Plaintiff, by delivering a copy of same to his office on the 9th day of January, 1956.

R. MACEY TAYLOR,
(R. Macey Taylor),
Attorney for said Defendants.

I, R. Macey Taylor, certify that I have served a copy of the foregoing Response to Admissions on Eric Stirling, Jr., Esq., Attorney, Birmingham, Alabama, as attorney for Defendants J. M. Brown, Jr., et al., on this 9th day of January, 1956.

R. MACEY TAYLOR,
(R. Macey Taylor),
Attorney for said Defendants.

RESPONSE TO REQUEST FOR ADMISSIONS.

Filed Jan. 18, 1956.

(Title Omitted.)

Now comes the plaintiff, by and through its attorney and responds to the request for admissions herewith filed by defendants Brown, Thomas and Lankford as follows:

[redacted]

[redacted]

[redacted]

Doyle counsel for the parties making such request by delivering a copy of the same to his office in the Frank Nelson Building on the 17th day of January, 1958.

ROBERT McD. SMITH,
Attorney for Plaintiff.

Certificate of Service.

I certify that I have served a copy of the foregoing response to request for admissions on Hon. Erle Pettus, Jr., counsel for all other defendants by mailing a copy of the same to his office in the Massey Building on the 17th day of January, 1958.

ROBERT McD. SMITH,
Attorney for Plaintiff.

ORDER ON PRE-TRIAL HEARING.

(Title Omitted.)

This cause coming on to be heard on a regular pre-trial hearing, and all parties being present in person or by counsel, the following action was thereupon taken:

1. The following pleadings and amendments were allowed:

Complaint and Answer.

2. It was agreed by all of the parties that the following are all of the issues in controversy in this cause:

Under Count Three of the complaint, plaintiff claims of defendants $250,000.00 as damages, averring that the defendants did conspire or combine for the purpose of hindering, delaying and preventing the plaintiff from carrying on its lawful business as a common carrier, and that the defendants did willfully and maliciously, and without excuse cause a shut-down of plaintiff's railroad lines, proximately resulting in the damages claimed.

For answers to the complaint, the defendants and each of them plead the general issue.

The defendants have filed a motion for judgment on the pleadings under Rule 12(c) of the Federal Rules of Civil Procedure. Matters outside the pleadings have been presented to the Court, and the Court will consider said motion as a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. After hearing oral arguments of counsel, this motion is taken under submission for further consideration by the Court. If said motion is overruled, the plaintiff will be given an opportunity to recast its complaint charging a wrongful interference with the plaintiff business, in which case the defendants will be afforded an opportunity to file responsive pleadings thereto.

It is therefore Ordered by the Court that all of the above-named allowances and agreements be, and the same are hereby binding upon all parties in the above styled cause, unless this order be hereafter modified by order of the Court.

Done this 1st day of February, 1956.
H. H. GROOMS,
United States District Judge.

ORDER ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT.

(Title Omitted.)

Upon the pre-trial of this cause on February 1, 1956, the Court took under advisement the defendants' motion for summary judgment (originally filed as one for judgment on the pleadings) under Rule 56. After consideration of the pleadings in the cause, movants' exhibits 1 and 2 in support of said motion, plaintiff's exhibits 1 through 8 in opposition thereto, and of the oral arguments and briefs, the Court is of the opinion that said motion for summary judgment should be overruled. Russell v. International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C.I.O., 258 Ala. 615, 64 So. 2d 384, and United Construction Workers v. Laburnum Construction Company, 347 U. S. 656.

It is, therefore, Ordered, Adjudged and Decreed that the defendants' motion for a summary judgment be and the same is hereby overruled.

Done and ordered this 6 day of February, 1956.
H. H. GROOMS,
Judge.

MOTION TO RECONSIDER AND SET ASIDE ORDER OF COURT DENYING MOTION FOR SUMMARY JUDGMENT FOR DEFENDANTS AND TO ENTER AN ORDER FOR SUMMARY JUDGMENT FOR DEFENDANTS.

Filed Feb. 8, 1956.

(Title Omitted.)

Come the defendants, J. M. Brown, Jr. J. B. Otts, Jr., T. A. Kennedy, H. D. Parker, J. M. Weldon, H. E. Southerland, C. L. McCutcheon, W. L. Grissom, M. L. Hall, and R. A. Sutterlin, separately and severally, by their attorneys and hereby move the Court to reconsider and set aside the order of the Court dated February 6, 1956, denying defendants' motion for summary judgment for lack of jurisdiction and to enter a summary judgment for defendants dismissing the complaint for lack of jurisdiction.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
FRANK O. BURGE, JR.,
(Frank O. Burge, Jr.),
Attorneys for Defendants,
J. M. Brown, Jr., J. B. Otts, Jr., T. A. Kennedy, H. D. Parker, J. M. Weldon, H. E. Southerland, C. L. McCutcheon, W. L. Grissom, M. L. Hall and R. A. Sutterlin.

JACKSON, RIVES, PETTUS & PETERSON,
Of Counsel.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been mailed postage prepaid to James A. Simpson, Esq., c/o Messrs. Lange, Simpson, Robinson & Somerville, Frank Nelson Building, Birmingham, Alabama, as attorney for plaintiff.

This 8th day of February, 1956.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for said Defendants.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been mailed postage prepaid to R. Macey Taylor, Esq., Frank Nelson Building, Birmingham, Alabama, as attorney for defendants, H. M. Baum, A. R. Thomas and R. H. Letchman.

This 8th day of February, 1956

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for said Defendants.

ORDER ON MOTION TO RECONSIDER AND TO SET ASIDE ORDER DENYING MOTION FOR SUMMARY JUDGMENT, ETC.

(Title Omitted.)

This cause, coming on to be heard, was submitted to the Court on the motion of certain defendants to reconsider and to set aside the order of the Court denying the motion for summary judgment for the defendants and to enter a summary judgment for the defendants, and on the motions of certain of the defendant for production of documents, to require more complete answers to interrogatories, and to protect the defendants from annoyance, embarrassment or oppression in the taking of depositions.

During the oral argument of counsel on the defendants' motion to set aside the order denying their motion for summary judgment, it appeared to the Court that the Court's prior ruling denying the defendants' motion to dismiss as directed to Count Three of the complaint, as amended, was laid in error. After due consideration thereof, the Court is now of the opinion that Count Three is defective and that it should sustain the motion to dismiss as to Count Three and pass the other outstanding motions pending an amendment to the complaint and the refiling of motions to dismiss the complaint, as last amended.

It is, therefore, Ordered, Adjudged and Decreed by the Court that the decree of this Court heretofore entered on the 30 day of December, 1955, be and the same is hereby modified and amended in the following particulars: in that the defendants' respective

motion to dismiss the complaint be and the same are hereby granted as to Count Three of said complaint, as amended, and said Count Three is hereby dismissed. The plaintiff is hereby allowed 10 days from the date hereof within which to amend its complaint if it so desires.

The other outstanding motions in this cause be and the same hereby are continued to the next motion docket of the undersigned judge.

Done and Ordered, this 24 day of February, 1956.

H. H. GROOMS.

AMENDMENT TO COMPLAINT.

Filed Mar. 5, 1956.

(Title Omitted.)

Comes the plaintiff in the above styled cause and amends its complaint by striking Count Three thereof and substituting therefor the following:

Amended Count Three.

Plaintiff avers that on, to-wit, October 23, 1955 it was engaged in a lawful business, to-wit, that of a common carrier by rail in interstate commerce, and that on or about said date the defendants, being employees of plaintiff, did conspire or combine to interfere with plaintiff's said business and pursuant to said conspiracy or combination did intentionally and without

just cause interfere with and prevent plaintiff from carrying on said business in that they caused other employees of plaintiff, by means of intimidation or threat of force or violence, not to perform their duties with plaintiff and did thereby cause a substantially total cessation of plaintiff's operation in Jefferson, Morgan and Montgomery Counties and other places on its lines in the State of Alabama and as a proximate consequence thereof plaintiff was injured and damaged in the amount of $250,000.00 which plaintiff claims of defendants as damages in this cause.

GIBSON & GIBSON,
ROBERT McD. SMITH,
Attorneys for Plaintiff.

H. G. BREETZ,
JAMES A. SIMPSON,
LANGE, SIMPSON, ROBINSON & SOMERVILLE,
1023 Frank Nelson Building,
Birmingham, Alabama,
Of Counsel.

Certificate of Service.

I hereby certify that a copy of the foregoing Amendment to Complaint has this day been delivered to Hon. Clifford Fulford, attorney for defendant T. A. Kennedy, at his office in the Frank Nelson Building, Birmingham, Alabama this 3rd day of March, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff.

Certificate of Service.

I hereby certify that a copy of the foregoing Amendment to Complaint has this day been delivered to Hon.

R. Macey Taylor, attorney for defendants Baum, Thomas and Letchman, at his office in the Frank Nelson Building, Birmingham, Alabama this 3rd day of March, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff.

Certificate of Service.

I hereby certify that a copy of the foregoing Amendment to Complaint has this day been delivered to Hon. Erle Pettus, in the Massey Building, Birmingham, Alabama this 3rd day of March, 1956.

ROBERT McD. SMITH.
Attorney for Plaintiff.

AMENDED ANSWER.

Filed March 5, 1956.

(Title Omitted.)

Come the defendants, J. M. Brown, Jr., J. B. Otts, Jr., H. K. Parker, J. M. Weldon, H. E. Southerland, C. L. McCutcheon, W. L. Grissom, M. L. Hall and R. A. Sutterlin, by the attorneys and hereby re-assign all motions, responsive pleadings, answers and defenses heretofore assigned to the complaint and each count thereof to amend count three.

In addition to the foregoing, defendants add thereto the following answer and defense, separately and severally, to-wit:

Eighth Defense.

Said count fails to state a claim upon which relief can be granted on the following grounds, separately and severally, to-wit:

(a) Said count fails to allege an exhaustion of administrative remedies before the National Railroad Labor Board (NRLB).

(b) Said count fails to allege that there is an existing "no strike" provision construed by the NRLB to be such.

(c) Said count fails to charge that the defendants of action declared on is a labor dispute within the primary exclusive jurisdiction of the NRLB under the Railway Labor Act.

(d) Said count shows affirmatively that the defendant employees of plaintiff have the legal right intentionally to interfere with plaintiff's business by a strike or work stoppage and there are no allegations in said count negativing the exercise of such right.

(e) Said count fails to charge that the defendants or any two or more of the defendants entered into any illegal conspiracy against plaintiff.

(f) Said count fails to charge any actionable wrong against the defendants individually or collectively.

(g) Said count fails to charge any individual defendant with the commission of any actionable wrong.

(h) Said count fails to charge the defendants collectively with the commission of any actionable wrong.

(i) Said count fails to charge two or more of the defendants with an actionable conspiracy.

(j) Said count fails to state a cause of action in tort or in contract against the defendants or any of the defendants.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
FRANK O. BURGE, JR.,
(Frank O. Burge, Jr.),
Attorneys for Defendants,
J. M. Brown, Jr., J. B. Otts, Jr., H. K. Parker, J. M. Weldon, H. E. Southerland, C. L. McCutcheon, W. L. Grissom, M. L. Hall and R. A. Sutterlin.

JACKSON, RIVES, PETTUS & PETERSON,
Of Counsel.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been mailed postage prepaid to James A. Simpson, Esq., c/o Messrs. Lange, Simpson, Robinson & Somerville, Frank Nelson Building, Birmingham, Alabama, as attorney for plaintiff.

This 5th day of March, 1956.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for said Defendants.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been mailed postage prepaid to R. Macey Taylor, Esq., Frank Nelson Building, Birmingham, Alabama, as attorney for defendants, H. M. Baum, A. R. Thomas and R. H. Letchman.

This 5th day of March, 1956

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for said defendants.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been mailed postage prepaid to R. Clifford Fulford, Esq., Frank Nelson Building, Birmingham, Alabama, as attorney for defendant, T. A. Kennedy.

This 5th day of March, 1956.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for said Defendants.

REASSIGNMENT OF MOTION, RESPONSES AND DEFENSES.

Filed March 7, 1956.

(Title Omitted.)

The defendant, T. A. Kennedy, by and through his attorneys, reassigns to Amended Count Three of the Complaint, the motions, responses and defenses, separately and severally, heretofore filed and assigned in his behalf to the Complaint and the Counts thereof in this cause.

LEVINE & FULFORD,
By R. CLIFFORD FULFORD,
(R. Clifford Fulford),
Attorneys for the Defendant, T. A. Kennedy.

Certificate of Service.

I hereby certify that a copy of the above and foregoing pleading has been mailed postage prepaid, to Hon. Robert McD. Smith, Lange, Simpson, Robinson & Somerville, 10th floor, Frank Nelson Building, Birmingham, Alabama, and Hon. White Gibson, Jr., Gibson & Gibson, Comer Building, Birmingham, Alabama, of counsel for plaintiff; to Hon. Erle Pettus, Jr., Jackson, Rives, Pettus & Peterson, Massey Building, Birmingham, Alabama, attorneys for certain of the defendants for whom they appear; and to Hon. R. Macey Taylor, Frank Nelson Building, Birmingham, Alabama, attorney for the defendants Baum, Thomas and Letchman.

This the 5th day of March, 1956.

R. CLIFFORD FULFORD,
(R. Clifford Fulford),
Of counsel for the Defendant, T. A. Kennedy.

MOTION TO DISMISS THE COMPLAINT AS LAST AMENDED.

Filed March 8, 1956.

(Title Omitted.)

Now come the Defendants H. M. Baum, A. R. Thomas and R. H. Letchman by and through their attorney, R. Macey Taylor, and hereby re-file and re-assign separately and severally each and every ground in the Motion to Dismiss, heretofore filed by said Defendants, to the Complaint as last amended and in addition thereto assign the following grounds separately and severally:

20. The Complaint, as last amended, fails to allege the existence of a conspiracy.

21. The Complaint, as last amended, fails to allege that the defendants or any of them entered into an unlawful agreement.

22. The Complaint, as last amended, fails to allege that the Defendants or any of them agreed to commit an unlawful act in furtherance of an agreement to accomplish a lawful objective.

23. The allegations of the Complaint, as last amended, are merely conclusions of law.

24. The allegation in the Complaint, as last amended, of "intimidation or threats of force or violence" are mere conclusions of the pleader.

R. MACEY TAYLOR,
(R. Macey Taylor),
Attorney for H. M. Baum,
A. R. Thomas and R. H.
Letchman.

Certificate of Service.

I, R. Macey Taylor, hereby certify that a copy of the foregoing has been served on Robert McDavis Smith, attorney for the Plaintiff, by delivering a copy to his office.

This 8th day of March, 1956.

R. MACEY TAYLOR,
(R. Macey Taylor).

Certificate of Service.

I, R. Macey Taylor, hereby certify that a copy of the foregoing has been served on Erle Pettus, Jr., by delivering a copy to his office.

This 8th day of March, 1956.

R. MACEY TAYLOR,
(R. Macey Taylor).

Certificate of Service.

I, R. Macey Taylor, certify that a copy of the foregoing has been served on R. Clifford Fulford, attorney for T. A. Kennedy, by delivering a copy to his office.

This 8th day of March, 1956.

R. MACEY TAYLOR,
(R. Macey Taylor).

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO THE COMPLAINT AS LAST AMENDED.

Filed March 8, 1956.

(Title Omitted.)

Now come the Defendants H. M. Baum, A. R. Thomas and R. H. Letchman, by and through their attorney, R. Macey Taylor, and for answer to the complaint as last amended, hereby submit the following:

Said Defendants hereby re-file the answer and affirmative defenses heretofore filed in this cause to the complaint as last amended.

R. MACEY TAYLOR,
(R. Macey Taylor),
Attorney for H. M. Baum,
A. R. Thomas and R. H.
Letchman.

Certificate of Service.

I, R. Macey Taylor, hereby certify that a copy of the foregoing has been served on Robert McDavid Smith, attorney for the Plaintiff, by deliveiing a copy to his office.

This 8th day of March, 1956.

R. MACEY TAYLOR,
(R. Macey Taylor).

I, R. Macey Taylor, hereby certify that a copy of the foregoing has been served on Erle Pettus, Jr. by delivering a copy to his office.

This 8th day of March, 1956.

R. MACEY TAYLOR,
(R. Macey Taylor).

I, R. Macey Taylor, certify that a copy of the foregoing has been served on R. Clifford Fulford, attorney for T. A. Kennedy, by delivering a copy to his office.

This 8th day of March, 1956.

R. MACEY TAYLOR,
(R. Macey Taylor).

INTERROGATORIES TO PLAINTIFF.

Mar. 12, 1956.

(Title Omitted.)

Come the defendants, J. M. Brown, Jr., J. B. Otts, Jr., H. K. Parker, C. L. McCutcheon, W. L. Grissom, J. M. Weldon, H. E. Southerland, M. L. Hall and R. A. Sutterlin, and, pursuant to the Federal Rules of Civil Procedure, herewith propound to the plaintiff the following interrogatories:

1. State fully and in detail with respect to the defendant, J. M. Brown, Jr.:

(a) Did the said defendant at any time referred to in the complaint as amended, use words and/or acts and/or use other means of intimidating other employees of the plaintiff not to perform their duties for plaintiff.

(b) If so, then describe and state fully and in detail the words and/or acts and/or other means so used or performed by the said defendant to intimidate said other employees of the plaintiff and state with respect thereto the following: (1) The name and address of each employee of plaintiff so intimidated by the said defendant and the duties which the said alleged intimidated employee failed to perform by reason of said alleged intimidation and the time, place and date of such alleged intimidated employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to

have intimidated each employee of plaintiff named in answer to Interrogatory 1. (b) (1). (3) The time, date and place of the alleged intimidation by the said defendant of each employee of the plaintiff named in answer to Interrogatory 1. (b) (1).

(c) Did said defendant at any time referred to in the complaint as amended, use words and/or perform acts and/or use other means of threats of force and/or violence to cause other employees of the plaintiff not to perform their duties for the plaintiff.

(d) If so, then describe and state fully and in detail the words and/or acts and/or other means of threats of force and/or violence used by the said defendant and state with respect thereto the following: (1) The name and address of each employee of plaintiff so threatened by said defendant and the duties which said alleged threatened employee failed to perform and the time, place and date of the said alleged threatened employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have threatened each employee of plaintiff named in answer to Interrogatory 1. (d) (1). (3) The time, date and place of the alleged threats made by the said defendant to each employee respectively named in answer to Interrogatory 1. (d) (1).

2. (a) State whether or not the defendant, J. M. Brown, Jr., did conspire with other defendants and/or persons in the conspiracy mentioned in the amended complaint.

(b) If so, then state with reference to the alleged conspiracy the following: (1) The time, place and date said conspiracy is alleged to have been entered into by the said defendant. (2) The name and address of each person present at the time said conspiracy was entered into by the defendant. (3) The words and/or acts by which said defendant indicated agreement with the other alleged conspirators to form the conspiracy. (4) The purpose of the said conspiracy. (5) All material agreements pertaining to the conspiracy entered into by the said defendant and the other alleged conspirators. (6) Every word and act and any other means employed by the defendant in furtherance of the alleged conspiracy.

3. (a) Did the said defendant, J. M. Brown, Jr. personally participate in or commit any act of violence in connection with "total cessation of plaintiff's operation" as alleged in the amended complaint.

(b) If so, then state the time, date and place and the names and addresses of persons present, and the name of the person or identity of the property involved in each said alleged act of violence so participated in or committed by the said defendant.

4. State fully and in detail with respect to the defendant, J. B. Otts, Jr.:

(a) Did the said defendant at any time referred to in the complaint as amended, use words and/or acts and/or use other means of intimidating other employees of the plaintiff not to perform their duties for plaintiff.

(b) If so, then describe and state fully and in detail the words and/or acts and/or other means so used or performed by the said defendant to intimidate said other employees of the plaintiff and state with respect thereto the following: (1) The name and address of each employee of plaintiff so intimidated by the said defendant and the duties which the said alleged intimidated employee failed to perform by reason of said alleged intimidation and the time, place and date of such alleged intimidated employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have intimidated each employee of plaintiff named in answer to Interrogatory 1. (b) (1). (3) The time, date and place of the alleged intimidation by the said defendant of each employee of the plaintiff named in answer to Interrogatory 1. (b) (1).

(c) Did said defendant at any time referred to in the complaint as amended, use words and/or perform acts and/or use other means of threats of force and/or violence to cause other employees of the plaintiff not to perform their duties for the plaintiff.

(d) If so, then describe and state fully and in detail the words and/or acts and/or other means of threats of force and/or violence used by the said defendant and state with respect thereto the following: (1) The name and address of each employee of plaintiff so threatened by said defendant and the duties which said alleged threatened employee failed to perform and the time, place and date of the said alleged threatened employee's failure to perform said alleged duties. (2) The names and addresses of all

persons within a radius of fifty feet from the place that said defendant is alleged to have threatened each employee of plaintiff named in answer to Interrogatory 1. (d) (1). (3) The time, date and place of the alleged threat made by the said defendant to each employee respectively named in answer to Interrogatory 1. (d) (1).

5. (a) State whether or not the defendant, J. B. Otts, Jr., did conspire with other defendants and/or persons in the conspiracy mentioned in the amended complaint.

(b) If so, then state with reference to the alleged conspiracy the following: (1) The time, place and date said conspiracy is alleged to have been entered into by the said defendant, (2) The name and address of each person present at the time said conspiracy was entered into by the defendant. (3) The words and/or acts by which said defendant indicated agreement with the other alleged conspirators to form the conspiracy. (4) The purpose of the said conspiracy. (5) All material agreements pertaining to the conspiracy entered into by the said defendant and the other alleged conspirators. (6) Every word and act and any other means employed by the defendant in furtherance of the alleged conspiracy.

6. (a) Did the said defendant, J. B. Otts, Jr., personally participate in or commit any act of violence in connection with "total cessation of plaintiff's operation" as alleged in the amended complaint.

(b) If so, then state the time, date and place and the names and addresses of persons present, and the

name of the person or identity of the property involved in each said alleged act of violence as participated in or committed by the said defendant.

7. State fully and in detail with respect to the defendant, H. K. Parker:

(a) Did the said defendant at any time referred to in the complaint as amended, use words and/or acts and/or use other means of intimidating other employees of the plaintiff not to perform their duties for plaintiff.

(b) If so, then describe and state fully and in detail the words and/or acts and/or other means so used or performed by the said defendant to intimidate said other employees of the plaintiff and state with respect thereto the following: (1) The name and address of each employee of plaintiff so intimidated by the said defendant and the duties which the said alleged intimidated employee failed to perform by reason of said alleged intimidation and the time, place and date of such alleged intimidated employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have intimidated each employee of plaintiff named in answer to Interrogatory 1. (b) (1). (3) The time, date and place of the alleged intimidation by the said defendant of each employee o the plaintiff named in answer to Interrogatory 1. (b) (1).

(c) Did said defendant at any time referred to in the complaint as amended, use words and/or perform acts and/or use other means of threats of force and/or

violence to cause other employees of the plaintiff not to perform their duties for the plaintiff.

(d) If so, then describe and state fully and in detail the words and/or acts and/or other means of threats of force and/or violence used by the said defendant and state with respect thereto the following: (1) The names and addresses of each employee of plaintiff so threatened by said defendant and the duties which said alleged threatened employee failed to perform and the time, place and date of the said alleged threatened employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have threatened each employee of plaintiff named in answer to Interrogatory 1. (d) (1). (3) The time, date and place of the alleged threats made by the said defendant to each employee respectively named in answer to Interrogatory 1. (d) (1).

2. (a) State whether or not the defendant, H. K. Parker, did conspire with other defendants and/or persons in the conspiracy mentioned in the amended complaint.

(b) If so, then state with reference to the alleged conspiracy the following: (1) The time, place and date said conspiracy is alleged to have been entered into by the said defendant. (2) The name and address of each person present at the time said conspiracy was entered into by the defendant. (3) The words and/or acts by which said defendant indicated agreement with the other alleged conspirators to form the conspiracy. (4) The purpose of the said con-

spiracy. (5) All material agreements pertaining to the conspiracy entered into by the said defendant and the other alleged conspirators. (6) Every word and act and any other means employed by the defendant in furtherance of the alleged conspiracy.

9. (a) Did the said defendant, H. K. Parker personally participate in or commit any act of violence in connection with "total cessation of plaintiff's operation" as alleged in the amended complaint.

(b) If so, then state the time, date and place and the names and addresses of persons present, and the name of the person or identity of the property involved in each said alleged act of violence so participated in or committed by the said defendant.

10. State fully and in detail with respect to the defendant, C. L. McCutcheon:

(a) Did the said defendant at any time referred to in the complaint as amended, use words and/or acts and/or use other means of intimidating other employees of the plaintiff not to perform their duties for plaintiff.

(b) If so, then describe and state fully and in detail the words and/or acts and/or other means so used or performed by the said defendant to intimidate said other employees of the plaintiff and state with respect thereto the following: (1) The name and address of each employee of plaintiff so intimidated by the said defendant and the duties which the said alleged intimidated employee failed to perform by reason of said alleged intimidation and the time, place

[redacted]

(c) [redacted]

(d) [redacted]

(1) [redacted]

(2) [redacted]

(3) [redacted]

(4) [redacted]

(5) [redacted]

(6) [redacted]

(7) [redacted]

(8) [redacted]

(9) [redacted]

(10) [redacted]

(11) [redacted]

(12) [redacted]

(13) [redacted]

(14) [redacted]

(15) [redacted]

(16) [redacted]

(17) [redacted]

(18) [redacted]

(19) [redacted]

(20) [redacted]

(c) Did the defendant, C. L. McCutcheon, conspire with other defendants to participate in the conspiracy mentioned in the amended complaint?

(d) If so, then state with reference to the alleged conspiracy the following: (1) The time, place and manner in which it is alleged to have been entered into by said defendant. (2) The names and addresses of persons present at the time said conspiracy was entered into by the defendant. (3) The manner in which said defendant indicated [illegible] with the other alleged conspirators to form the conspiracy. (4) The purpose of the said conspiracy. (5) All material agreements pertaining to said conspiracy entered into by the said defendant and the other alleged conspirators. (6) Every word and act and any other means employed by the defendant in furtherance of the alleged conspiracy.

(e) Did the said defendant, C. L. McCutcheon, knowingly participate in or commit any act of violence in connection with "total cessation of plaintiff's operation" as alleged in the amended complaint?

(f) If so, then state the time, date and place and the names and addresses of persons present, and the name of the person or identity of the property involved in each said alleged act of violence so participated in or committed by the said defendant.

12. State fully and in detail with respect to the defendant, W. L. Grissom:

(a) Did the said defendant at any time referred to in the complaint as amended, use words and/or acts and/or use other means of intimidating other employees of the plaintiff not to perform their duties for plaintiff.

(b) If so, then describe and state fully and in detail the words and/or acts and/or other means so used or performed by the said defendant to intimidate said other employees of the plaintiff and state with respect thereto the following: (1) The names and address of each employee of plaintiff so intimidated by the said defendant and the duties which the said alleged intimidated employee failed to perform by reason of said alleged intimidation and the time, place and date of such alleged intimidated employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have intimidated each employee of plaintiff named in answer to Interrogatory 1. (b) (1). (3) The time, date and place of the alleged intimidation by the said defendant of each employee of the plaintiff named in answer to Interrogatory 1. (b) (1).

(c) Did said defendant at any time referred to in the complaint as amended, use words and/or perform acts and/or use other means of threats of force and/or violence to cause other employees of the plaintiff not to perform their duties for the plaintiff.

(d) If so, then describe and state fully and in detail the words and/or acts and/or other means of threats of force and/or violence used by the said defendant and state with respect thereto the following: (1) The name and address of each employee of plain-

[illegible] as threatened by said defendant and the duties which said alleged threatened employee failed to perform and the time, place and date of the said alleged threatened employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have threatened each employee of plaintiff named in answer to Interrogatory 1. (d) (1). (3) The time, date and place of the alleged threats made by the said defendant to each employee respectively named in answer to Interrogatory 1. (d) (1).

14. (a) State whether or not the defendant, W. L. Grissom, did conspire with other defendants and/or persons in the conspiracy mentioned in the amended complaint.

(b) If so, then state with reference to the alleged conspiracy the following: (1) The time, place and date said conspiracy is alleged to have been entered into by the said defendant. (2) The names and address of each person present at the time said conspiracy was entered into by the defendant. (3) The words and/or acts by which said defendant indicated agreement with the other alleged conspirators to form the conspiracy. (4) The purpose of the said conspiracy. (5) All material agreements pertaining to the conspiracy entered into by the said defendant and the other alleged conspirators. (6) Every word and act and any other means employed by the defendant in furtherance of the alleged conspiracy.

15. (a) Did the said defendant, W. L. Grissom, personally participate in or commit any act of vio-

lence in connection with "total cessation of plaintiff's operation" as alleged in the amended complaint.

(b) If so, then state the time, date and place and the names and addresses of persons present, and the name of the person or identity of the property involved in each said alleged act of violence so participated in or committed by the said defendant.

16. State fully and in detail with respect to the defendant, J. M. Weldon:

(a) Did the said defendant at any time referred to in the complaint as amended, use words and/or acts and/or use other means of intimidating other employees of the plaintiff not to perform their duties for plaintiff.

(b) If so, then describe and state fully and in detail the words and/or acts and/or other means so used or performed by the said defendant to intimidate said other employees of the plaintiff and state with respect thereto the following: (1) The name and address of each employee of plaintiff so intimidated by the said defendant and the duties which the said alleged intimidated employee failed to perform by reason of said alleged intimidation and the time, place and date of such alleged intimidated employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have intimidated each employee of plaintiff named in answer to Interrogatory 1. (b) (1). (3) The time, date and place of the alleged intimidation by the said defendant of each employee of the plaintiff named in answer to Interrogatory 1. (b) (1).

(c) Did said defendant at any time referred to in the complaint as amended, use words and/or perform acts and/or use other means of threats of force and/or violence to cause other employees of the plaintiff not to perform their duties for the plaintiff.

(d) If so, then describe and state fully and in detail the words and/or acts and/or other means of threats of force and/or violence used by the said defendant and state with respect thereto the following: (1) The name and address of each employee of plaintiff so threatened by said defendant and the duties which said alleged threatened employee failed to perform and the time, place and date of the said alleged threatened employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have threatened each employee of plaintiff named in answer to Interrogatory 1. (d) (1). (3) The time, date and place of the alleged threats made by the said defendant to each employee respectively named in answer to Interrogatory 1. (d) (1).

17. (a) State whether or not the defendant, J. M. Weldon, did conspire with other defendants and/or persons in the conspiracy mentioned in the amended complaint.

(b) If so, then state with reference to the alleged conspiracy the following: (1) the time, place and date said conspiracy is alleged to have been entered into by the said defendant. (2) The name and address of each person present at the time said conspiracy was entered into by the defendant. (3) The words and/or

acts by which said defendant indicated agreement with the other alleged conspirators to form the conspiracy. (4) The purpose of the said conspiracy. (5) All material agreements pertaining to the conspiracy entered into by the said defendant and the other alleged conspirators. (6) Every word and act and any other means employed by the defendant in furtherance of the alleged conspiracy.

18. (a) Did the said defendant, J. M. Weldon, personally participate in or commit any act of violence in connection with "total cessation of plaintiff's operation" as alleged in the amended complaint.

(b) If so, then state the time, date and place and the names and addresses of persons present, and the name of the person or identity of the property involved in each said alleged act of violence so participated in or committed by the said defendant.

19. State fully and in detail with respect to the defendant, H. E. Southerland:

(a) Did the said defendant at any time referred to in the complaint as amended, use words and/or acts and/or use other means of intimidating other employees of the plaintiff not to perform their duties for plaintiff.

(b) If so, then describe and state fully and in detail the words and/or acts and/or other means so used or performed by the said defendant to intimidate said other employees of the plaintiff and state with respect thereto the following: (1) The name and address of each employee of plaintiff so intimidated by

the said defendant and the duties which the said alleged intimidated employee failed to perform by reason of said alleged intimidation and the time, place and date of such alleged intimidated employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have intimidated each employee of plaintiff named in answer to Interrogatory 1. (b) (1). (3) The time, date and place of the alleged intimidation by the said defendant of each employee of the plaintiff named in answer to Interrogatory 1. (b) (1).

(c) Did said defendant at any time referred to in the complaint as amended, use words and/or perform acts and/or use other means of threats of force and/or violence to cause other employees of the plaintiff not to perform their duties for the plaintiff.

(d) If so, then describe and state fully and in detail the words and/or acts and/or other means of threats of force and/or violence used by the said defendant and state with respect thereto the following: (1) The name and address of each employee of plaintiff so threatened by said defendant and the duties which said alleged threatened employee failed to perform and the time, place and date of the said alleged threatened employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have threatened each employee of plaintiff named in answer to Interrogatory 1. (d) (1). (3) The time, date and place of the alleged threats made by the said defendant to each employee respectively named in answer to Interrogatory 1. (d) (1).

20. (a) State whether or not the defendant, H. E. Southerland, did conspire with other defendants and/or persons in the conspiracy contained in the amended complaint.

(b) If so, then state with reference to the alleged conspiracy the following: (1) The time, place and date said conspiracy is alleged to have been entered into by the said defendant. (2) The names and address of each person present at the time said conspiracy was entered into by the defendant. (3) The words and/or acts by which said defendant indicated agreement with the other alleged conspirators to form the conspiracy. (4) The purpose of the said conspiracy. (5) All material agreements pertaining to the conspiracy entered into by the said defendant and the other alleged conspirators. (6) Every word and act and any other means employed by the defendant in furtherance of the alleged conspiracy.

21. (a) Did the said defendant, H. E. Southerland, personally participate in or commit any act of violence in connection with "total cessation of plaintiff's operation" as alleged in the amended complaint.

(b) If so, then state the time, date and place and the names and addresses of persons present, and the name of the person or identity of the property involved in each said alleged act of violence so participated in or committed by the said defendant.

22. State fully and in detail with respect to the defendant, M. L. Hall:

(c) Did the said defendant at any time referred to in the complaint as amended, use words and/or acts and/or use other means of intimidating other employees of the plaintiff not to perform their duties for plaintiff.

(d) If so, then describe and state fully and in detail the words and/or acts and/or other means so used or performed by the said defendant to intimidate said other employees of the plaintiff and state with respect thereto the following: (1) The names and addresses of each employee of plaintiff so intimidated by the said defendant and the duties which the said alleged intimidated employee failed to perform by reason of said alleged intimidation and the time, place and date of each alleged intimidated employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have intimidated each employee of plaintiff named in answer to Interrogatory 1. (b) (1). (3) The time, date and place of the alleged intimidation by the said defendant of each employee of the plaintiff named in answer to Interrogatory 1. (b) (1).

(e) Did said defendant at any time referred to in the complaint as amended, use words and/or perform acts and/or use other means of threats of force and/or violence to cause other employees of the plaintiff not to perform their duties for the plaintiff.

(d) If so, then describe and state fully and in detail the words and/or acts and/or other means of threats of force and/or violence used by the said defendant and state with respect thereto the following:

(1) The name and address of each employee of plaintiff so threatened by said defendant and the duties which said alleged threatened employee failed to perform and the time, place and date of the said alleged threatened employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have threatened each employee of plaintiff named in answer to Interrogatory 1. (d) (1). (3) The time, date and place of the alleged threats made by the said defendant to each employee respectively named in answer to Interrogatory 1. (d) (1).

23. (a) State whether or not the defendant, M. L. Hall, did conspire with other defendants and/or persons in the conspiracy mentioned in the amended complaint.

(b) If so, then state with reference to the alleged conspiracy the following: (1) The time, place and date said conspiracy is alleged to have been entered into by the said defendant. (2) The name and address of each person present at the time said conspiracy was entered into by the defendant. (3) The words and/or acts by which said defendant indicated agreement with the other alleged conspirators to form the conspiracy. (4) The purpose of the said conspiracy. (5) All material agreements pertaining to the conspiracy entered into by the said defendant and the other alleged conspirators. (6) Every word and act and any other means employed by the defendant in furtherance of the alleged conspiracy.

24. (a) Did the said defendant, M. L. Hall, personally participate in or commit any act of violence in connection with "total cessation of plaintiff's operation" as alleged in the amended complaint.

(b) If so, then state the time, date and place and the names and addresses of persons present, and the name of the person or identity of the property involved in each said alleged act of violence so participated in or committed by the said defendant.

25. State fully and in detail with respect to the defendant, R. A. Sutterlin:

(a) Did the said defendant at any time referred to in the complaint as amended, use words and/or acts and/or use other means of intimidating other employees of the plaintiff not to perform their duties for plaintiff.

(b) If so, then describe and state fully and in detail the words and/or acts and/or other means so used or performed by the said defendant to intimidate said other employees of the plaintiff and state with respect thereto the following: (1) The name and address of each employee of plaintiff so intimidated by the said defendant and the duties which the said alleged intimidated employee failed to perform by reason of said alleged intimidation and the time, place and date of such alleged intimidated employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have intimidated each employee of plaintiff named in answer to Interrogatory 1. (b) (1). (3) The time,

date and place of the alleged intimidation by the said defendant of each employee of the plaintiff named in answer to Interrogatory 1. (b) (1).

(c) Did said defendant at any time referred to in the complaint as amended, use words and/or perform acts and/or use other means of threats of force and/or violence to cause other employees of the plaintiff not to perform their duties for the plaintiff.

(d) If so, then describe and state fully and in detail the words and/or acts and/or other means of threats of force and/or violence used by the said defendant and state with respect thereto the following: (1) The name and address of each employee of plaintiff so threatened by said defendant and the duties which said alleged threatened employee failed to perform and the time, place and date of the said alleged threatened employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have threatened each employee of plaintiff named in answer to Interrogatory 1. (d) (1). (3) The time, date and place of the alleged threats made by the said defendant to each employee respectively named in answer to Interrogatory 1. (d) (1).

28. (a) State whether or not the defendant, R. A. Sutterlin, did conspire with other defendants and/or persons in the conspiracy mentioned in the amended complaint.

(b) If so, then state with reference to the alleged conspiracy the following: (1) The time, place and date

said conspiracy is alleged to have been entered into by the said defendant. (2) The name and address of each person present at the time said conspiracy was entered into by the defendant. (3) The words and/or acts by which said defendant indicated agreement with the other alleged conspirators to form the conspiracy. (4) The purpose of the said conspiracy. (5) All material agreements pertaining to the conspiracy entered into by the said defendant and the other alleged conspirators. (6) Every word and act and any other means employed by the defendant in furtherance of the alleged conspiracy.

20. (a) Did the said defendant, R. A. Sutterlin, personally participate in or commit any act of violence in connection with "total cessation of plaintiff's operation" as alleged in the amended complaint.

(b) If so, then state the time, date and place and the names and addresses of persons present, and the name of the person or identity of the property involved in each said alleged act of violence so participated in or committed by the said defendant.

21. State fully and in detail with respect to the defendant, T. A. Kennedy:

(a) Did the said defendant at any time referred to in the complaint as amended, use words and/or acts and/or use other means of intimidating other employees of the plaintiff not to perform their duties for plaintiff.

(b) If so, then describe and state fully and in detail the words and/or acts and/or other means so

used or performed by the said defendant to intimidate said other employees of the plaintiff and state with respect thereto the following: (1) The name and address of each employee of plaintiff so intimidated by the said defendant and the duties which the said alleged intimidated employee failed to perform by reason of said alleged intimidation and the time, place and date of such alleged intimidated employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have intimidated each employee of plaintiff named in answer to Interrogatory 1. (b) (1). (3) The time, date and place of the alleged intimidation by the said defendant of each employee of the plaintiff named in answer to Interrogatory 1. (b) (1).

(c) Did said defendant at any time referred to in the complaint as amended, use words and/or perform acts and/or use other means of threats of force and/or violence to cause other employees of the plaintiff not to perform their duties for the plaintiff.

(d) If so, then describe and state fully and in detail the words and/or acts and/or other means of threats of force and/or violence used by the said defendant and state with respect thereto the following: (1) The name and address of each employee of plaintiff so threatened by said defendant and the duties which said alleged threatened employee failed to perform and the time, place and date of the said alleged threatened employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have threatened

each employee of plaintiff named in answer to Interrogatory 1. (d) (1). (3) The time, date and place of the alleged threats made by the said defendant to each employee respectively named in answer to Interrogatory 1. (d) (1).

29. (a) State whether or not the defendant, T. A. Kennedy, did conspire with other defendants and/or persons in the conspiracy mentioned in the amended complaint.

(b) If so, then state with reference to the alleged conspiracy the following: (1) The time, place and date said conspiracy is alleged to have been entered into by the said defendant. (2) The name and address of each person present at the time said conspiracy was entered into by the defendant. (3) The words and/or acts by which said defendant indicated agreement with the other alleged conspirators to form the conspiracy. (4) The purpose of the said conspiray. (5) All material agreements pertaining to the conspiray entered into by the said defendant and the other alleged conspirators. (6) Every word and act and any other means employed by the defendant in furtherance of the alleged conspiracy.

30. (a) Did the said defendant, T. A. Kennedy, personally participate in or commit any act of violence in connection with "total cessation of plaintiff's operation" as alleged in the amended complaint.

(b) If so, then state the time, date and place and the names and addresses of persons present, and the name of the person or identity of the property involved in each said alleged act of violence so participated in or committed by the said defendant.

31. State fully and in detail with respect to the defendant, H. M. Baum:

(a) Did the said defendant at any time referred to in the complaint as amended, use words and/or acts and/or use other means of intimidating other employees of the plaintiff not to perform their duties for plaintiff.

(b) If so, then describe and state fully and in detail the words and/or acts and/or other means so used or performed by the said defendant to intimidate said other employees of the plaintiff and state with respect thereto the following: (1) The name and address of each employee of plaintiff so intimidated by the said defendant and the duties which the said alleged intimidated employee failed to perform by reason of said alleged intimidation and the time, place and date of such alleged intimidated employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have intimidated each employee of plaintiff named in answer to Interrogatory 1. (b) (1). (3) The time, date and place of the alleged intimidation by the said defendant of each employee of the plaintiff named in answer to Interrogatory 1. (b) (1).

(c) Did said defendant at any time referred to in the complaint as amended, use words and/or perform acts and/or use other means of threats of force and/or violence to cause other employees of the plaintiff not to perform their duties for the plaintiff.

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(d) If so, then describe and state fully and in detail the words and/or acts and/or other means of threats of force and/or violence used by the said defendant and state with respect thereto the following: (1) The names and address of each employee of plaintiff so threatened by said defendant and the duties which said alleged threatened employee failed to perform and the time, place and date of the said alleged threatened employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have threatened each employee of plaintiff named in answer to Interrogatory 1. (d) (1). (3) The time, date and place of the alleged threats made by the said defendant to each employee respectively named in answer to Interrogatory 1. (d) (1).

2. (a) State whether or not the defendant, H. M. Bowman, did conspire with other defendants and/or persons in the conspiracy mentioned in the amended complaint.

(b) If so, then state with reference to the alleged conspiracy the following: (1) The time, place and date said conspiracy is alleged to have been entered into by the said defendant. (2) The name and address of each person present at the time said conspiracy was entered into by the defendant. (3) The words and/or acts by which said defendant indicated agreement with the other alleged conspirators to form the conspiracy. (4) The purpose of the said conspiracy. (5) All material agreements pertaining to the conspiracy entered into by the said defendant and the other alleged conspirators. (6) Every word and act

and any other means employed by the defendant in furtherance of the alleged conspiracy.

33. (a) Did the said defendant, H. M. Baum, personally participate in or commit any act of violence in connection with "total cessation of plaintiff's operation" as alleged in the amended complaint.

(b) If so, then state the time, date and place and the names and addresses of persons present, and the name of the person or identity of the property involved in each said alleged act of violence so participated in or committed by the said defendant.

34. State fully and in detail with respect to the defendant, R. H. Letchman:

(a) Did the said defendant at any time referred to in the complaint as amended, use words and/or acts and/or use other means of intimidating other employees of the plaintiff not to perform their duties for plaintiff.

(b) If so, then describe and state fully and in detail the words and/or acts and/or other means so used or performed by the said defendant to intimidate said other employees of the plaintiff and state with respect thereto the following: (1) The names and address of each employee of plaintiff so intimidated by the said defendant and the duties which the said alleged intimidated employee failed to perform by reason of said alleged intimidation and the time, place and date of each alleged intimidated employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty

[illegible] from the place that said defendant is alleged to have intimidated each employee of plaintiff named in answer to Interrogatory 1. (b) (1). (3) The time, date and place of the alleged intimidation by the said defendant of each employee of the plaintiff named in answer to Interrogatory 1. (b) (1).

(c) Did said defendant at any time referred to in the complaint as amended, use words and/or perform acts and/or use other means of threats of force and/or violence to cause other employees of the plaintiff not to perform their duties for the plaintiff.

(d) If so, then describe and state fully and in detail the words and/or acts and/or other means of threats of force and/or violence used by the said defendant and state with respect thereto the following: (1) The name and address of each employee of plaintiff so threatened by said defendant and the duties which said alleged threatened employee failed to perform and the time, place and date of the said alleged threatened employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have threatened each employee of plaintiff named in answer to Interrogatory 1. (d) (1). (3) The time, date and place of the alleged threats made by the said defendant to each employee respectively named in answer to Interrogatory 1. (d) (1).

[illegible]. (a) State whether or not the defendant, R. H. [illegible]man, did conspire with other defendants and/or persons in the conspiracy mentioned in the amended complaint.

(b) If so, then state with reference to the alleged conspiracy the following: (1) The time, place and date said conspiracy is alleged to have been entered into by the said defendant. (2) The name and address of each person present at the time said conspiracy was entered into by the defendant. (3) The words and/or acts by which said defendant indicated agreement with the other alleged conspirators to form the conspiracy. (4) The purpose of the said conspiracy. (5) All material agreements pertaining to the conspiracy entered into by the said defendant and the other alleged conspirators. (6) Every word and act and any other means employed by the defendant in furtherance of the alleged conspiracy.

36. (a) Did the said defendant, R. H. Letchman, personally participate in or commit any act of violence in connection with "total cessation of plaintiff's operation" as alleged in the amended complaint.

(b) If so, then state the time, date and place and the names and addresses of persons present, and the name of the person or identity of the property involved in each said alleged act of violence so participated in or committed by the said defendant.

37. State fully and in detail with respect to the defendant, W. C. Burnett:

(a) Did the said defendant at any time referred to in the complaint as amended, use words and/or acts and/or use other means of intimidating other employees of the plaintiff not to perform their duties for plaintiff.

(b) If so, then describe and state fully and in detail the words and/or acts and/or other means so used or performed by the said defendant to intimidate said other employees of the plaintiff and state with respect thereto the following: (1) The name and address of each employee of plaintiff so intimidated by the said defendant and the duties which the said alleged intimidated employee failed to perform by reason of said alleged intimidation and the time, place and date of such alleged intimidated employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have intimidated each employee of plaintiff named in answer to Interrogatory 1. (b) (1). (3) The time, date and place of the alleged intimidation by the said defendant of each employee of the plaintiff named in answer to Interrogatory 1. (b) (1).

(c) Did said defendant at any time referred to in the complaint as amended, use words and/or perform acts and/or use other means of threats of force and/or violence to cause other employees of the plaintiff not to perform their duties for the plaintiff.

(d) If so, then describe and state fully and in detail the words and/or acts and/or other means of threats of force and/or violence used by the said defendant and state with respect thereto the following: (1) The name and address of each employee of plaintiff so threatened by said defendant and the duties which said alleged threatened employee failed to perform and the time, place and date of the said alleged threatened employee's failure to perform said alleged duties. (2) The names and addresses of all

persons within a radius of fifty feet from the place that said defendant is alleged to have threatened each employee of plaintiff named in answer to Interrogatory 1. (d) (1). (2) The time, date and place of the alleged threats made by the said defendant to each employee respectively named in answer to Interrogatory 1. (d) (1).

38. (a) State whether or not the defendant, W. C. Burnett, did conspire with other defendants and/or persons in the conspiracy mentioned in the amended complaint.

(b) If so, then state with reference to the alleged conspiracy the following: (1) The time, place and date said conspiracy is alleged to have been entered into by the said defendant. (2) The name and address of each person present at the time said conspiracy was entered into by the defendant. (3) The words and/or acts by which said defendant indicated agreement with the other alleged conspirators to form the conspiracy. (4) The purpose of the said conspiracy. (5) All material agreements pertaining to the conspiracy entered into by the said defendant and the other alleged conspirators. (6) Every word and act and any other means employed by the defendant in furtherance of the alleged conspiracy.

39. (a) Did the said defendant, W. C. Burnett, personally participate in or commit any act of violence in connection with "total cessation of plaintiff's operation" as alleged in the amended complaint.

(b) If so then state the time, date and place and the names and addresses of persons present, and the name of the person or identity of the property in-

volved in each said alleged act of violence so participated in or committed by the said defendant.

40. State fully and in detail with respect to the defendant, A. R. Thomas:

(a) Did the said defendant at any time referred to in the complaint as amended, use words and/or acts and/or use other means of intimidating other employees of the plaintiff not to perform their duties for plaintiff.

(b) If so, then describe and state fully and in detail the words and/or acts and/or other means so used or performed by the said defendant to intimidate said other employees of the plaintiff and state with respect thereto the following: (1) The name and address of each employee of plaintiff so intimidated by the said defendant and the duties which the said alleged intimidated employee failed to perform by reason of said alleged intimidation and the time, place and date of such alleged intimidated employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have intimidated each employee of plaintiff named in answer to Interrogatory 1. (b) (1). (3) The time, date and place of the alleged intimidation by the said defendant of each employee of the plaintiff named in answer to Interrogatory 1. (b) (1).

(c) Did said defendant at any time referred to in the complaint as amended, use words and/or perform acts and/or use other means of threats of force and/or violence to cause other employees of the plaintiff not to perform their duties for the plaintiff.

(d) If so, then describe and state fully and in detail the words and/or acts and/or other means of threats of force and/or violence used by the said defendant and state with respect thereto the following: (1) The name and address of each employee of plaintiff so threatened by said defendant and the duties which said alleged threatened employee failed to perform and the time, place and date of the said alleged threatened employee's failure to perform said alleged duties. (2) The names and addresses of all persons within a radius of fifty feet from the place that said defendant is alleged to have threatened each employee of plaintiff named in answer to Interrogatory 1. (d) (1). (3) The time, date and place of the alleged threats made by the said defendant to each employee respectively named in answer to Interrogatory 1. (d) (1).

41. (a) State whether or not the defendant, A. R. Thomas, did conspire with other defendants and/or persons in the conspiracy mentioned in the amended complaint.

(b) If so, then state with reference to the alleged conspiracy the following: (1) The time, place and date said conspiracy is alleged to have been entered into by the said defendant. (2) The name and address of each person present at the time said conspiracy was entered into by the defendant. (3) The words and/or acts by which said defendant indicated agreement with the other alleged conspirators to form the conspiracy. (4) The purpose of the said conspiracy. (5) All material agreements pertaining to the conspiracy entered into by the said defendant and the other alleged conspirators. (6) Every word and

act and any other means employed by the defendant in furtherance of the alleged conspiracy.

2. (a) Did the said defendant, A. R. Thomas, personally participate in or commit any act of violence in connection with "total cessation of plaintiff's operation" as alleged in the amended complaint.

(b) If so, then state the time, date and place and the names and addresses of persons present, and the name of the person or identity of the property involved in each said alleged act of violence so participated in or committed by the said defendant.

ERLE PETTUS, JR.,
As Attorney for defendants
named on page 1.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been served upon James A. Simpson, Esq., c/o Messrs. Lange, Simpson, Robinson & Somerville, Frank Nelson Building, Birmingham, Alabama, as attorney for plaintiff.

This 9th day of March, 1956.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for Defendants
named on Page One.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been served upon R. Macey Taylor, Esq.,

Frank Nelson Building, Birmingham, Alabama, as attorney for defendants, H. M. Baum, A. R. Thomas and R. H. Letchman.

This 9th day of March, 1956.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for Defendants
named on Page One.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been served upon R. Clifford Fulford, Esq., Frank Nelson Building, Birmingham, Alabama, as attorney for defendant, T. A. Kennedy.

This 9th day of March, 1956.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for Defendants
named on Page One.

AMENDED INTERROGATORIES.

Filed March 22, 1956.

(Title Omitted.)

Come the defendants, J. M. Brown, Jr., J. B. Otts, Jr., H. K. Parker, C. L. McGutcheon, W. L. Grissom, J. M. Weldon, H. E. Southerland, M. L. Hall and R.

A. Sutterlin, and hereby amend the interrogatories to plaintiff hereto filed as follows:

Interrogatory 4 (b)

Amend Interrogatory 4. (b) by substituting, in lieu of the words and figures, "Interrogatory 1. (b) (1)" wherever same appear therein, the words and figures, "Interrogatory 4. (b) (1)".

Interrogatory 4. (d).

Amend Interrogatory 4. (d) by substituting, in lieu of the words and figures, "Interrogatory 1. (d) (1)" wherever same appear therein, the words and figures, "Interrogatory 4. (d) (1)".

Interrogatory 7. (b).

Amend Interrogatory 7. (b) by substituting, in lieu of the words and figures, "Interrogatory 1. (b) (1)" wherever same appear therein, the words and figures, "Interrogatory 7. (b) (1)".

Interrogatory 7. (d).

Amend Interrogatory 7. (d) by substituting, in lieu of the words and figures, "Interrogatory 1. (d) (1)" wherever same appear therein, the words and figures, "Interrogatory 7. (d) (1)".

Interrogatory 10. (b).

Amend Interrogatory 10. (b) by substituting, in lieu of the words and figures, "Interrogatory 1. (b) (1)"

wherever same appear therein, the words and figures "Interrogatory 10. (b) (1)".

Interrogatory 10. (d).

Amend Interrogatory 10. (d) by substituting, in lieu of the words and figures, "Interrogatory 1. (d) (1)" wherever same appear therein, the words and figures "Interrogatory 10. (d) (1)".

Interrogatory 12. (b).

Amend Interrogatory 12. (b) by substituting, in lieu of the words and figures, "Interrogatory 1. (b) (1)" wherever same appear therein, the words and figures "Interrogatory 12. (b) (1)".

Interrogatory 12. (d).

Amend Interrogatory 12. (d) by substituting, in lieu of the words and figures "Interrogatory 1. (d) (1)" wherever same appear therein, the words and figures "Interrogatory 12. (d) (1)".

Interrogatory 16. (b).

Amend Interrogatory 16 (b) by substituting, in lieu of the words and figures "Interrogatory 1. (b) (1)" wherever same appear therein, the words and figures "Interrogatory 16. (b) (1)".

Interrogatory 16. (d).

Amend Interrogatory 16. (d) by substituting, in lieu of the words and figures, "Interrogatory 1. (d) (1)"

wherever same appear therein, the words and figures "Interrogatory 18. (d) (1)".

Interrogatory 19. (b).

Amend Interrogatory 19. (b) by substituting, in lieu of the words and figures "Interrogatory 1. (b) (1)" wherever same appear therein, the words and figures "Interrogatory 19. (b) (1)".

Interrogatory 19. (d).

Amend Interrogatory 19. (d) by substituting, in lieu of the words and figures, "Interrogatory 1. (d) (1)" wherever same appear therein, the words and figures "Interrogatory 19. (d) (1)".

Interrogatory 22. (b).

Amend Interrogatory 22. (b) by substituting, in lieu of the words and figures, "Interrogatory 1. (b) (1)" wherever same appear therein, the words and figures "Interrogatory 22. (b) (1)".

Interrogatory 22. (d).

Amend Interrogatory 22. (d) by substituting, in lieu of the words and figures, "Interrogatory 1. (d) (1)" wherever same appear therein, the words and figures "Interrogatory 22. (d) (1)".

Interrogatory 25. (b).

Amend Interrogatory 25. (b) by substituting, in lieu of the words and figures, "Interrogatory 1. (d) (1)"

wherever same appear therein, the words and figures "Interrogatory 25 (d) (1)".

"Interrogatory 25. (d) (1)".

Interrogatory 25. (d).

Amend Interrogatory 25. (d) by substituting, in lieu of the words and figures "Interrogatory 1. (d) (1)" wherever same appear therein, the words and figures "Interrogatory 25. (d) (1)".

Interrogatory 28. (b).

Amend Interrogatory 28. (b) by substituting, in lieu of the words and figures, "Interrogatory 1. (b) (1)" wherever same appear therein, the words and figures "Interrogatory 28. (b) (1)".

Interrogatory 28. (d).

Amend Interrogatory 28. (d) by substituting, in lieu of the words and figures, "Interrogatory 1. (d) (1)" wherever same appear therein, the words and figures "Interrogatory 28. (d) (1)".

Interrogatory 31. (b).

Amend Interrogatory 31. (b) by substituting, in lieu of the words and figures, "Interrogatory 1. (b) (1)" wherever same appear therein, the words and figures "Interrogatory 31. (b) (1)".

Interrogatory 31. (d).

Amend Interrogatory 31. (d) by substituting, in lieu of the words and figures, "Interrogatory 1. (d) (1)" wherever same appear therein, the words and figures, "Interrogatory 31. (d) (1)".

Interrogatory 34. (b).

Amend Interrogatory 34. (b) by substituting, in lieu of the words and figures, "Interrogatory 1. (b) (1)" wherever same appear therein, the words and figures, "Interrogatory 34. (b) (1)".

Interrogatory 34. (d).

Amend Interrogatory 34. (d) by substituting, in lieu of the words and figures, "Interrogatory 1. (d) (1)" wherever same appear therein, the words and figures, "Interrogatory 34. (d) (1)".

Interrogatory 37. (b).

Amend Interrogatory 37. (b) by substituting, in lieu of the words and figures, "Interrogatory 1. (b) (1)" wherever same appear therein, the words and figures, "Interrogatory 37. (b) (1)".

Interrogatory 37. (d).

Amend Interrogatory 37. (d) by substituting, in lieu of the words and figures, "Interrogatory 1. (d) (1)" wherever same appear therein, the words and figures, "Interrogatory 37. (d) (1)".

Interrogatory 40. (b).

Amend Interrogatory 40. (b) by substituting, in lieu of the words and figures, "Interrogatory 1. (b) (1)" wherever same appear therein, the words and figures "Interrogatory 40. (b) (1)".

Interrogatory 40. (d).

Amend Interrogatory 40. (d) by substituting, in lieu of the words and figures, "Interrogatory 1. (d) (1)" wherever same appear therein, the words and figures, "Interrogatory 40. (d) (1)".

JACKSON, RIVER, PETTUS & PETTUS,

By ERLE PETTUS, JR.,
Attorneys for Defendants.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been served upon James A. Simpson, Esq. c/o Messrs. Lange, Simpson, Robinson & Somerville, Frank Nelson Building, Birmingham, Alabama, as attorney for plaintiff.

This 21 day of March, 1955.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for Defendants named on Page One.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been served upon R. Macey Taylor, Esq., Frank Nelson Building, Birmingham, Alabama, as attorney for defendants, H. M. Baum, A. R. Thomas and R. H. Letchman.

This 21 day of March, 1966.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for Defendants
named on Page One.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been served upon R. Clifford Fulford, Esq., Frank Nelson Building, Birmingham, Alabama, as attorney for defendant, T. A. Kennedy.

This 21 day of March, 1966.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for Defendants
named on Page One.
MARY L. (Illegible).

ORDER OVERRULING DEFENDANTS' MOTIONS TO DISMISS COUNT THREE OF COMPLAINT AS LAST AMENDED, ETC.

(Title Omitted.)

This matter coming on for a hearing upon the defendants' separate and several motions to dismiss Count Three of the complaint, as last amended, and upon the plaintiff's request for reconsideration of the Court's order of December 28, 1938, granting the defendants' motions to dismiss Count One; and upon the argument of counsel, the Court is of the opinion that said motions to dismiss as to Count Three of the complaint, as last amended, should be overruled, and that the plaintiff's request for reconsideration of the order of December 28, 1938, as it related to Count One should be denied,

It is, therefore, Ordered, Adjudged and Decreed:

(1) That the defendants' separate and several motions to dismiss Count Three of the complaint, as last amended, by and the same are hereby separately and severally overruled, and

(2) That the plaintiff's request for reconsideration of the order of December 28, 1938, sustaining defendants' motions to dismiss Count One be and the same is hereby denied.

Done and Ordered, this 3 day of April, 1939.

H. H. CROCKER,
Judge.

AMENDMENT TO ORDER OF APRIL 3, 1956.

(Title Omitted.)

Upon motion made by plaintiff in open Court the Court amends its order of April 3, 1956 to read as follows:

This matter coming on for a hearing upon the defendants' separate and several motions to dismiss Count Three of the complaint, as last amended, and upon the plaintiff's request for reconsideration of the Court's order of December 30, 1955, granting the defendants' motion to dismiss Count One; and upon due consideration thereof, the Court is of the opinion that said motions to dismiss as to Count Three of the complaint, as last amended, should be overruled and that the plaintiff's request for reconsideration of the order of December 30, 1955, as it related to Count One should be denied, the Court being of the opinion that the alleged causes of action relates to a controversy falling within the exclusive primary jurisdiction of the National Railroad Adjustment Board, under the authorities cited in the Court's order of December 30, 1955;

It is, therefore, Ordered, Adjudged and Decreed:

(1) That the defendants' separate and several motions to dismiss Count three of the complaint, as last amended, be and the same are hereby separately and severally overruled; and

(2) That the plaintiff's request for reconsideration of the order of December 30, 1955, sustaining de-

fendants' motions to dismiss Count One be and the same is hereby denied.

Done and Ordered, this 12 day of April, 1956.

H. H. GROOMS,
Judge.

PLAINTIFF'S ANSWERS TO DEFENDANTS' INTERROGATORIES.

Filed April 25, 1956.

(Title Omitted.)

Comes the plaintiff in the above styled cause and for answer to interrogatories heretofore propounded to it, says as follows:

1 (a) Yes, although plaintiff is not at this time informed as to each specific individual act of his.

1 (b) He was one of a group who caused other employees not to perform their duties for plaintiff by informing them that a strike was in effect, by directing them not to work, by posting and maintaining pickets and observers at and near the entrances to plaintiff's premises, some of whom displayed weapons, and by the use of threats of violence directly addressed to certain employees. The fact that during a strike in March, April and May, 1955, another in August, 1955, as well as at intervening times, numerous employees of plaintiff attempting to work had been assaulted and injured or threatened with death

or serious bodily harm by persons participating in the strikes, by the use of clubs, knives, firearms and other deadly weapons, and the fact that there had been widespread sabotage and vandalism by the use of fire, and dynamite, all of which had the effect of terrorizing plaintiff's employees and their families from working during a "strike" was commonly known to this defendant and those acting in conjunction with him at all times during the period which is the subject of this suit. All the words, acts and means employed by this defendant were spoken, done and used with knowledge that the effect of announcing said strike and of posting pickets and watchers would be to intimidate other employees not to perform their duties for plaintiff. At the present stage of its investigation of this case, which is still in progress, plaintiff is not fully and completely informed as to all the acts of this defendant in the matter inquired about.

1 (b) (1) The intimidation by the group, including this defendant, and their agents and abettors acting in their behalf prevented all or substantially all plaintiff's employees at Birmingham, Decatur, Cullman and Montgomery, Alabama, from performing any duties, and affected, to wit, more than two thousand employees, during the period from, to wit, 8:45 P.M. Sunday, October 23, 1955, to and including, to wit, 7:00 P.M., Wednesday, October 26, 1955.

1 (b) (2) Answered.

1 (b) (3) Answered.

1 (c) Plaintiff is not able to answer this interrogatory categorically at this time. Individually, person-

ally, and directly, this particular defendant is not known to have used any threats of force or violence. The means used by this defendant was that of participating in the act of calling a strike, in the course of which persons acting and meeting him and his co-conspirators ordered employees to leave and remain away from their work, using the fear and threat of violence created by previous intimidation, as well as direct threats and overt acts of violence.

1 (d) (1), (2) and (3). Answered.

2 (a) He did.

2 (b) (1) About 5:00 P.M., Sunday, October 23, 1955, at the home of defendant, H. K. (Shorty) Parker, 5024 41st Way North, Birmingham, Alabama. This was the principal meeting as to the conspiracy. Other meetings before and after this one, were held, at which various persons discussed the subject matter of the strike.

2 (b) (2).

H. E. Anderson, 4228 8th Ave., No., Birmingham, Ala.

Bruce Barnett, 4136 38th Ave., No., Birmingham, Ala.

H. M. Baum, 4501 11th Ave., No., Birmingham, Ala.

J. M. Brown, Jr, 124 South 69th Street, Birmingham, Ala.

F. M. Edwards, 338 9th Ave., No., Decatur, Alabama.

F. L. Fleming, 2415 12th Ave., No., Decatur, Ala.

W. L. Grissom, 5332 5th Terrace So., Birmingham, Ala.

M. L. Hall, 137 Springdale Rd., Birmingham, Ala.

T. A. Kennedy, 4156 51st Avenue North, Birmingham, Alabama.

R. H. Letchman, 1003 25th Street S.W., Birmingham, Alabama.

W. L. Logan, 4913 Avenue N (C.P), Birmingham, Alabama.

C. L. McCutcheon, 1009 Overton Avenue, Tarrant, Alabama.

J. B. Otts, Jr., 808 Jefferson Blvd., Tarrant, Alabama.

H. K. Parker, 5024 41st Way, North, Birmingham, Alabama.

H. E. Southerland, 4106 51st Avenue North, Birmingham, Alabama.

A. J. Stewart, 3028 40th Avenue North, Birmingham, Alabama.

R. A. Sutterlin, House No. 67, Mt. Olive, Alabama.

A. R. Thomas, Jr., 4346 68th Street North, Birmingham, Alabama.

D. C. Vann, 1816 McCaskill Street, Tarrant, Alabama.

J. M. Weldon, 1726 16th Street, North Birmingham, Alabama.

2 (b) (3) This defendant collaborated with other members of the group present at the meeting referred to in (b) (1) above, in compiling a list of persons who would assist in carrying out the stoppage of the plaintiff's business, as agreed upon by them. Plaintiff cannot at this time supply the exact words used by this defendant, but can only state, as above, what he did to indicate his agreement and concurrence.

2 (b) (4) The purpose of the conspiracy was maliciously to injure the plaintiff's business by bringing about, by intimidation of its' employees, a stoppage of plaintiff's business as a common carrier of interstate commerce.

2 (b) (5) It was agreed that this defendant and the other conspirators and those aiding and abetting them would stage a strike without waiting for the matter referred to in 2 (b) (4) above, to be handled in the normal and usual way, and thus, by economic pressure, force and coerce the plaintiff to restore the discontinued jobs by inflicting great loss and damage on the plaintiff. The agreement was that this action should begin by causing a stoppage of work beginning at or about 9:00 P.M., on Sunday, October 23, 1955, using the method of notifying plain-

tiff's employees that a strike was in progress, ordering them to leave and remain away from their work, posting pickets or watchers at the entrances to plaintiff's property, and using direct threats and intimidation if it became necessary to do so.

2 (b) (6) Plaintiff cannot furnish every word or act employed by this defendant in furtherance of the conspiracy at this time. However, he assisted the others, as above stated, in compiling a list of those present at the meeting who would notify other employees that a strike had been called by the firemen, cause those at work to leave their jobs, and act as pickets at the various gates and places of business of the plaintiff. He attended one or more other meetings held by the conspirators and their agents during the strike, and failed and refused to report for work at any time during the period of the strike.

3 (a) So far as plaintiff now knows, this defendant did not individually commit any act of violence, but planned and agreed with others that they would stop the plaintiff's business from operating, and in the course of carrying out this plan and agreement acts of violence were committed by the co-conspiraptors of this defendant and others acting in concert with him.

3 (b) Answered.

4 (a) Plaintiff refers to and adopts, in partial answer to this interrogatory all that appears in answer to Interrogatory No. 1 (b) above. In addition thereto, plaintiff states as follows:

J. B. Otts, Jr. went to the Boyles yard of the plaintiff at about 9:00 P.M., on the night of October 23, 1955, and remained there as the highest ranking union official among those who participated in the conspiracy to stop other employees from carrying on their work, for two or more hours, or until it was apparent that the above described plan of said conspirators was being carried out successfully. He then left, and for the duration of the strike did not directly and personally take part in intimidating employees of the plaintiff so far as plaintiff now knows, but acted as directing head of the conspirators who were engaged in intimidating actions and words, and himself remained absent from his place of work throughout the period of the strike.

4 (b) (1) (2) (3). Answered.

4 (c) Plaintiff does not at this time know of any personal or individual threats or violence which J. B. Otts, Jr., committed, except such as were implicit in his presence at the Boyles Yard on the night of October 23, 1955, with a large group of persons gathered at and around the entrances to the yard, engaged in halting the work of plaintiff's employees, causing them to leave its premises and preventing others from going into its premises to work.

4(d) (1) (2) (3) Answered.

5 (a) He did.

5 (b) (1) At or near the regular meeting place of Local No. 937, Brotherhood of Locomotive Firemen and Enginemen, in Inglenook on the night of Friday,

October 21, 1955, and later at the residence of H. K. (Shorty) Parker, 3024 41st Way, North, Birmingham, Alabama, on the afternoon of Sunday, October 23, 1955, at about 4:30-5:00 P.M.

5 (b) (2) Those present on Friday night, were W. L. Grissom, H. K. Parker, C. L. McCutcheon, J. B. Otts, Jr. Those present on Sunday afternoon were the persons listed in answer to Interrogatory No. 2 (b) (2) above.

5 (b) (3) Otts, as Local Chairman of Local No. 997, Brotherhood of Locomotive Firemen and Enginemen, was the ranking leader of the group who formed the conspiracy He is the man who prescribed the wording of certain picket signs which were obtained for use in advertising the fact that a strike was in progress. He was active in agitating the taking of strike action by spreading the opinion that the action of the company in abolishing the outside hostler helper jobs was illegal and improper, prior to the time the strike was begun. At the meeting at Parker's home on Sunday, October 23, 1955, he encourged the strike by giving his opinion that it would be legal. He went to the property of his employer on Sunday night at or about the time fixed for the action to begin and remained there in his capacity as leader of the group causing the strike, and chief representative, until it was apparent that the work of the employer had been effectively halted. He communicated by long distance telephone with Firemen J. B. Bryam at Montgomery, after which communication said Bryam and others acting in concert with him part-

[redacted]

[redacted]

[redacted]

7 (c) Yes.

[redacted]

7 (b) (2) Answered.

7 (b) (3) Answered.

7 (c) For answer to this interrogatory, plaintiff adopts the answer heretofore given in Interrogatory No. 1 (b) above.

7 (d) (1) (2) (3) For answer to this interrogatory, plaintiff adopts the answer heretofore given to Interrogatory No. 1 (b) above.

(e) Yes.

8 (b) (1) Friday night, October 21, 1955, at the regular meeting place of his local union, and Sunday afternoon October 23, 1955, in a garage at his own residence, 3024 41st Way North, Birmingham, Alabama, at in-wit, 5:00 P.M.

8 (b) (2) Answered in No. 3 (b) (3) above.

8 (b) (3) Parker took part in the general discussion by the group of conspirators leading up to the decision and agreement to cause a stoppage of the business of the plaintiff. He remained in the meeting from beginning to end, and at or about the agreed time was present on the premises of the plaintiff, lending support to the successful effort to cause all employees to leave work. He failed and refused to work at his own employment thereafter, the period of the strike has terminated promptly when it was over. Plaintiff cannot supply the specific words used by Parker to indicate agreement with other conspirators but can only state, as above, what he did.

8 (b) (4) Plaintiff adopts in answer to this interrogatory the answer given above to Interrogatory No. 2 (b) (4).

8 (b) (5) Plaintiff adopts as the answer to this interrogatory the answer given above to Interrogatory No. 2 (b) (5).

8 (b) (6) Answered.

8 (c) Insofar as this interrogatory relates to the individual and personal acts of this defendant, as distinguished from those of his co-conspirators and those assisting him and them, plaintiff can at this time only state that Parker participated in the actual stopping of work at Boyles on October 21, 1958, and thereafter continued perfect by his presence at or absent an entrance to plaintiff's property on at least two other nights during the strike or work stoppage, as above stated.

9 (b) As before stated, the intimidation exercised by Parker and others affected and involved, and effectively prevented some two thousand persons, members of all crafts as well as officials of the plaintiff, from carrying out their duties for a period of approximately three days and three nights. No individual was directly subjected to physical violence at the hands of H K. Parker as far as plaintiff is presently able to state.

10 (a) Yes.

10 (b) For answer to this interrogatory, plaintiff refers to and adopts the answer to interrogatory

No. 1 (b) above, the interrogatories herein, plaintiff [illegible]

10 (b) (1) Upon receipt of defendant's interrogatories, plaintiff [illegible] the answers thereto, the answers previously given to Interrogatory No. 1 (b) (1) above.

10 (b) (2) As of the time of answering these interrogatories and to the best of plaintiff's knowledge, the following

E. L. Gowan, [illegible] Ave. U., Birmingham, Alabama.

L. P. Jordan, [illegible] Shaw Avenue, Terrant, Alabama.

J. C. Lacey, [illegible] Crestwood Street, Birmingham, Alabama.

Ervis Rich, Route 12, Box 1378, Birmingham, Alabama.

R. E. Thomas, [illegible] Jackson Street, Birmingham, Alabama.

C. F. Holston, Care L&N R. R. Co., Birmingham, Alabama.

Ed Derrity, 8716 First Avenue South, Birmingham, Alabama.

P. O. Chapman, 3810 40th Avenue North, Birmingham, Alabama.

Dewey Cavino, 4266 40th Avenue North, Birmingham, Alabama.

A. R. Thomas, defendant.

H. K. Parker, defendant.

J. M. Weldon, defendant.

J. B. Otts, Jr., 818 Jefferson Boulevard, Tarrant, Alabama.

H. E. Southerland, defendant.

E. E. Houts, 536 South 56th Street, Birmingham, Alabama.

10 (b) (3) Answered.

10 (c) Answered.

10 (d) (1) (2) (3) Answered.

11 (a) Yes.

11 (b) (1) At the regular meeting place of Local No. 937, on Friday night, October 21, 1955, and about 5:00 Pm., Sunday, October 23, 1955, at the home of defendant H. K. (Shorty) Parker, 3024 41st Way North, Birmingham, Alabama.

11 (b) (2) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (2) above.

11 (b) (3) Plaintiff cannot at this time supply the exact words and actions of this defendant, but is informed and believes that he expressed concurrence with the decision to cause and enforce the "wild-cat" strike agreed upon by the conspirators at the meeting, and thereafter this defendant took an active part in furthering said conspiracy.

11 (b) (4) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (4) above.

11 (b) (5) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (5) above.

11 (b) (6) Answered.

12 (a) So far as plaintiff presently knows, this defendant did not individually or directly participate in any act of violence during the period covered by the stoppage of its' business, but assisted in informing employees that a strike was in progress, and participated in picketing during the period of the "wild-cat" strike, in the carrying out of which acts of violence

were committed and threats voiced by co-conspirators, named agents and abettors of this defendant, and the other conspirators.

12 (b) Answered.

13 (a) Yes.

13 (b) For answer to this interrogatory, plaintiff refers to adopts the answer to Interrogatory No. 1 (b) above. For further answer hereto, plaintiff says that W. L. Grissom was one of those who acted as a picket and watcher at and near one or more of the entrances to plaintiff's places of business including, to wit, Harris Avenue and 20th Street, in Birmingham, which action, as was generally known to him and others concerned, was designed to be and had the effect of being intimidating to plaintiff's employees.

13 (b) (1) For answer to this interrogatory, plaintiff adopts the answer previously given to Interrogatory No. 1 (b) (1) above.

13 (b) (2) As of the time of answering these interrogatories, and to the best of plaintiff's knowledge, the following:

H. D. Camp, 1330 17th Avenue South, Birmingham, Alabama.

P. O. Chapman, 3810 40th Avenue North, Birmingham, Alabama.

R. E. Frazer, 616 Jackson Boulevard, Tarrant, Alabama.

J. V. Saab, 2365 23rd Street, Ensley, Birmingham, Alabama.

13 (b) (3) Answered.

13 (c) Answered.

13 (d) (1) (2) (3) Answered.

14 (a) Yes.

14 (b) (1) At the regular meeting place of his local union in the night of October 21, 1955, and about 5:00 P.M. Sunday, October 23, 1955, at the home of defendant, H. K. (Shorty) Parker, 5024 41st Way, North, Birmingham, Alabama.

14 (b) (2) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (2) above.

14. (b) (3) Plaintiff cannot presently supply the exact words and actions of this defendant, but is informed and believes that he expressed concurrence with the decision to cause and enforce the "wild-cat" strike agreed upon by the conspirators at the meeting, and thereafter this defendant took an active part in furthering said conspiracy.

14 (b) (4) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (4) above.

14 (b) (5) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (5) above.

14 (b) (6) Answered.

15 (a) So far as plaintiff previously knows, this defendant did not individually or directly participate in any act of violence, but assisted in informing employees that a strike was in progress, and participated in picketing and watching during the period of the "wild-cat" strike, in the carrying out of which strike acts of violence were committed by co-conspirators, agents and abettors of this defendant.

15 (b) Answered.

16 (a) Yes.

16 (b) For answer to this interrogatory, plaintiff refers to and adopts the answer to Interrogatory No. 1 (b) above. For further answer hereto, plaintiff says that J. M. Weldon on the night of October 21, 1955, in company with others, displayed an open knife to Lee Thomas, a 66 year old colored fireman, whose residence address is 325 Goldwire Street, Birmingham, Alabama, telling him, in substance, that there was a strike in, and that if he came back to work, he (Thomas) would be killed. This defendant used profane language and referred to Thomas as a "scab" and ordered him not to "scab" during this strike. The incident described took place on the premises of the plaintiff at its passenger station, and by reason of it, as well as fear of others, said Lee Thomas did not work until he was notified that the strike was over.

16 (b) (2) As of the time of answering these interrogatories and to the best of plaintiff's knowledge, the following:

Lee Thomas, address as above.

Robert Parker, 4809 Greenwood Street, Birmingham, Alabama.

16 (b) (3) Answered.

16 (c) Answered.

16 (d) (1) (2) (3) Answered.

17 (a) Yes.

17 (b) (1) About 4:30 or 5:00 P.M., Sunday, October 23, 1955, at the home of defendant, H. K. (Shorty) Parker, 5024 41st Way North, Birmingham, Alabama.

17 (b) (2) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (2) above.

17 (b) (3) This defendant expressed general agreement with the plan agreed upon and subsequently carried out by the conspirators and others acting as their agents, co-conspirators and abettors. He stated a desire to be on the "detail", a term generally known and understood by those present to mean a "strong-arm group" or "goon squad" and stated that he (Weldon) owned a baseball bat. All the exact actions and words spoken by Weldon are not known to plaintiff at this time. Subsequently to the meeting this defendant actively assisted in carrying out the decision made at the meeting, and himself remained absent from his duties for the entire period of the strike.

17 (b) (4) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (4), above.

17 (b) (4) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (5), above.

17 (b) (6) Answered.

18 (a) Yes.

18 (b) Answered. (See 16 (b) and 16 (b) (2) above.

19 (a) Yes.

19 (b) (1) Plaintiff refers to and adopts in partial answer to this interrogatory all that appears in answer to Interrogatory No. (1) (b) and (1) (b) (1), above. In addition thereto, plaintiff states as follows: H. E. Southerland was a member of the group who met at the home of H. K. (Shorty) Parker on Sunday, October 23, 1955, and planned and agreed upon the details of the conspiracy to cause the strike and stoppage of plaintiff's business and operations. Promptly following the meeting, upon the representation that he was sick, he laid off his job assignment and remained off until he returned shortly after he learned that the strike was over. At, to-wit, 8:30 P.M. on Sunday night, he met with others in the vicinity of plaintiff's Boyles Yard for the purpose of assisting, as needed, in the closing of its operations.

19 (b) (2) As of the time of answering these interrogatories and to the best of plaintiff's knowledge, the following:

Dewey Cavins, 4225 48th Avenue North, Birmingham, Alabama.

C. F. Hobson, 1716 Oak Street N. W., Birmingham, Alabama.

18 (b) (3) Answered.

18 (c) For answer to this interrogatory plaintiff refers to and adopts the answer given to Interrogatory No. (1) (c) above.

19 (d) (1) (2) (3) Answered.

20 (a) Yes.

20 (b) About 5:00 P.M. Sunday, October 23, 1955 at the home of defendant, H. K. (Shorty) Parker, 9024 41st Way, North, Birmingham, Alabama.

20 (b) (2) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (2) above.

20 (b) (3) Plaintiff cannot supply the exact words and actions of this defendant in the meeting, but is informed and believes that he indicated concurrence with the decision to cause and enforce the "wild-cat" strike agreed upon by the co-conspirators at the meeting, and thereafter this defendant actively participated in furthering the purpose of the group, as stated above.

20 (b) (4) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (4) above.

20 (b) (5) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (5) above.

20 (b) (6) Answered.

21 (a) So far plaintiff presently knows this defendant did not directly and as an individual commit any act of violence, but was a member of the group which formed and carried out the conspiracy, was present with the crowd when the employees at Boyles were caused to leave their jobs on Sunday, October 23, 1955, at the beginning of the shut-down of plaintiff's business, in the course of which co-conspirators, agents and abettors of this defendant carried out acts of violence and other intimidating conduct as described above.

21 (b) Answered.

22 (a) Yes.

22 (b) For partial answer to this interrogatory plaintiff refers to and adopts the answer to Interrogatory No. 1 (b) above; for further answer hereto, plaintiff says that M. L. Hall, immediately after leaving the meeting at the Parker home in which the conspiracy and plan was formed and decided upon, laid off his job. Thereafter, at about 8:30 to 9:00 P.M. on October 23, 1955, along with the majority of those who had agreed upon the shut-down of the plaintiff's business, he went to the Boyles Yard of plaintiff, entered the yard and advised employees then at work that the firemen had called a strike and instructed them to get off their jobs and out of the yard. Others

among the conspirators furthering the plan at or about this time and place used threats and displayed weapons. Thereafter on October 24, 1955, Hall acted as a picket and member of the Master Mechanics gate at Empire Yards. He did not work at any time during the period of the strike, but presented himself for work as soon as it was learned that the strike had been called off.

23 (b) (1) For answer to this interrogatory, plaintiff refers to and adopts, in words and figures, the answer previously given to Interrogatory No. 1 (b) (1) above.

23 (b) (2) As of the time of answering these interrogatories and to the best of plaintiff's knowledge, the following:

W. T. Owen, 1221 9th Court South, Birmingham, Alabama.

C. F. Hobson, 1716 Oak Street N. W., Birmingham, Alabama.

H. T. Simrell, 3916 41st Avenue North, Birmingham, Alabama.

R. E. Frazer, 616 Jackson Boulevard, Tarrant, Alabama.

23 (b) (3) Answered.

23 (c) Answered.

23 (d) (1) (2) (3) Answered.

23 (a) Yes.

23 (b) (1) At the home of H. K. (Shorty) Parker, 5324 41st Way, North, Birmingham, Alabama, at about 4:00 P.M. Sunday, October 22, 1963.

23 (b) (2) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (2) above.

23 (b) (3) Plaintiff cannot presently supply the exact words and actions of this defendant, but is informed and believes that he expressed concurrence with the decision and plan to cause and enforce the "wild-cat" work stoppage or strike agreed upon by the conspirators at the meeting, and thereafter this defendant took an active part in furthering said conspiracy, in the manner described above.

23 (b) (4) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (4) above.

23 (b) (5) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. (2) (b) (5) above.

23 (b) (6) Answered.

24 (a) So far as plaintiff presently knows, M. L. Hall did not, as an individual, personally commit any act of violence but he assisted the other conspirators in causing other employees to leave their jobs and to remain away from them throughout the period of the "wild-cat" strike caused by them, and in the progress

of the same various acts of violence were committed and threats of violence made by co-conspirators, agents and abettors of this defendant and the other conspirators named.

24 (b) Answered.

25 (a) As an individual actor, other than as a member of the group which met at the home of H. K. (Shorty) Parker and formulated the plan and conspiracy to cause a shut-down and stoppage of plaintiff's business, this defendant is not presently known to have taken a part in intimidating other employees.

25 (b) (1) (2) (3) Answered.

25 (c) Yes, as a messenger.

25 (d) (1) (2) (3) This defendant, on October 22, 1955, at about 6:00 A.M., at the request of defendants, A. B. Thomas and C. L. McCutcheon communicated to L. C. Parrett, an engineer with whom he was then working at the Boyles Yard, a threatening message warning Parrett against attempting to work during the impending strike as he had done in a prior strike.

26 (a) So far as plaintiff presently knows, only to the extent that he was a member of the group which met at the Parker home on Sunday afternoon October 23, 1955.

26 (b) (1) (2) (3) (4) (5) (6) So far as plaintiff's investigation reveals as of the time of the answering of these interrogatories, this defendant did not say or do anything while in said meeting. At 5:30 P.M. on

the date of the meeting, however, he laid off from work, representing that he was sick and remained absent from his employment throughout the period of the "wild-cat" strike and shut down of plaintiff's work.

26 (b) Answered.

27 (a) So far as plaintiff knows at this time, he did not personally and individually commit or participate in any act of violence. At the present time, plaintiff is not sufficiently informed to give a categorical answer to this interrogatory, being only informed that this defendant was a member of the group which met at H. K. Parker's home and thereafter failed to work during the period of the strike.

27 (b) Answered.

28 (a) No.

28 (b) (1) (2) (3) Answered.

28 (c) Answered.

28 (d) (1) (2) (3) Answered.

29 (a) Defendant T. A. Kennedy was one of the group at the meeting at the home of H. K. Parker on Sunday, October 23, 1955, at which the conspiracy described in answer to interrogatories 2 (a) and 2 (b) above, was formulated and entered into. However, as of the time of answering these interrogatories plaintiff is not informed that said T. A. Kennedy took an active part in the formation of the conspiracy agreed

upon by the other conspirators. As of this time, plaintiff's information is that he took no part in the formation nor the execution of the conspiracy, other than he was involved in his laying off his own job as soon as he left the meeting at Parker's home, and remaining absent from work during the period of the strike.

29 (b) (1) (2) (3) (4) (5) (6) Answered.

30 (a) Not to plaintiff's present knowledge, information and belief.

30 (b) Answered.

31 (a) Yes.

31 (b) For partial answer to this interrogatory, plaintiff refers to and adopts the answer given to Interrogatory 1 (b) above.

For additional answer to this interrogatory plaintiff says as follows:

H. M. Baum, after attending the meeting at the home of H. K. (Shorty) Parker, went to the Boyles Yard of the plaintiff on the night of October 28, 1955, and met with others of the conspirators for the purpose of enforcing the decision agreed upon at said meeting. He went into the Yard Office of the plaintiff at about 8:00 P.M. on that date armed with a club or stick, and ordered the Trainmaster and all clerks on duty to get out, and remained there until this order had been complied with. He attempted to persuade others to serve as pickets and watchers at one or more of the entrances to plaintiff's yard on the same

night. He warned one or more employees not to make any further effort to work during the strike. On October 24, 25, and 26, 1955, Baum served as a picket or watcher at one or more of the entrances of plaintiff's yards from about 6:30 each morning until about 3:00 each afternoon, where he was a member of groups of men gathered near the gate. He was active during this period in preventing other employees and persons wishing to go into the premises from entering them, and did not report for work at any time during the period of the "wild-cat" strike which is the subject of this suit.

31 (b) (1) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 1 (b) (1) above.

31 (b) (2) As of the time of answering these interrogatories and to the best of plaintiff's knowledge, the following:

J. F. Zuidethoek, 200 14th Court, N.W., Birmingham, Alabama.

C. J. Strotter, 216 2nd Street, Birmingham, Alabama.

B. M. Mitchell, c/o L&N Railroad Company, Evansville, Indiana.

C. T. Myrick, 1235 33rd Street Norwood, Birmingham, Alabama.

T. E. Davis, c/o L&N RR Co., Birmingham, Alabama.

Coy Purkey, 1529 Mountain Drive, Birmingham, Alabama.

E. E. Houts, 536 South 56th Street, Birmingham, Alabama.

O'Neal Coleman, 3825 39th Court North, Birmingham, Alabama.

E. L. Sexton, 4624 Avenue U, Birmingham, Alabama.

C. F. Hobson, 1716 Oak Street N.W., Birmingham, Alabama.

Louie B Wilkes, 513 Oxmoor Road, Birmingham, Alabama.

W. D. Wren, Jr., 4341 Harmon Street N. Birmingham, Alabama.

C. B. Hill 4324 Greenwood Street, Birmingham, Alabama.

A. S. Johnson, 1401 Woodlawn Avenue, Birmingham, Alabama.

John A. Wall, Jr., 1225 Linthicum Street, Tarrant, Alabama.

P. O. Chapman, 3810 40th Avenue North, Birmingham, Alabama.

J. T. McDaniel, 1308 13th Street North, Birmingham, Alabama.

George W. Brittain, 4212 38th Avenue North, Birmingham, Ala.

C. V. Steelman, 2425 37th Avenue North, Birmingham, Ala.

J. W. Huckaby, 3823 43rd Avenue North, Birmingham, Alabama.

J. W. Scott, 4012 33rd Avenue North, Birmingham, Alabama.

O. W. Garnett, 3812 North 43rd Avenue, Birmingham, Alabama.

L. B. Sheffield, 3809 Hale Avenue, Biemingham, Alabama.

31 (b) (3) Answered.

31 (c) Answered.

31 (d) (1) (2) (3) (4) (5) (6) Answered.

32 (a) Yes.

32 (b) At the home of defendant H. K. (Shorty) Parker, 5024 41st Way North, Birmingham, Alabama, at about 5:00 P.M. Sunday, October 23, 1955.

32 (b) (2) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (2) above.

32 (b) (3) This defendant took an active part in the general discussion by the group of conspirators

leading up to the decision and agreement to cause a stoppage of the business of the plaintiff. He remained at the meeting, evidencing agreement with and support of the plan, and thereafter fully supported the conspiracy with his personal actions and efforts as set forth above. Plaintiff cannot at this time supply the specific words used by Bauss to indicate agreement with the other conspirators but can only state, as above, what he did in support of the plan.

32 (b) (4) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. (2) (b) (4) above.

32 (b) (5) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (5), above.

32 (b) (6) Answered.

33 (a) Answered.

33 (b) Answered.

34 (a) Yes.

34 (b) For answer to this interrogatory plaintiff refers to and adopts the answer given to Interrogatory No. 1 (a) above. In addition thereto, plaintiff says as follows: Defendant R. H. Letchman was one of a group, including other firemen who had conspired and agreed to cause plaintiff's employees not to perform their duties by means of a strike, who interfered with and intimidated two officials of the plaintiff, B. M. Mitchell and C. E. Waelde by block-

ing the entrance to a part of plaintiff's property, viz, the Master Mechanic's gate at Boyles Yard. In addition to this specific incident, the conspirators causing the strike including this defendant, and their agents, co-conspirators and abettors acting in concert with them and in their behalf prevented all or substantially all plaintiff's employees at Birmingham, Decatur, Cullman and Montgomery, Alabama, from performing any duties, and said intimidation affected, to wit, more than two thousand employees during the period from, to wit, 8:45 P.M. Sunday, October 23, 1955 to and including, to wit, 7:00 P.M. Wednesday, October 26, 1955.

34 (b) (1) In addition to the employees affected generally by said intimidation, as stated above, too numerous to mention by name, the action referred to in answer to Interrogatory No. 34 (b) involved B. M. Mitchell, c/o L&N Railroad Company, Evansville, Indiana and C. E. Waelde, c/o L&N Railroad Company, Montgomery, Alabama, and caused them to remain absent from all their duties as Train Master and Assistant Train Master at Birmingham, from, to wit, Noon, October 24, 1955, to, to wit, 7:00 P.M. October 26, 1955. This intimidating encounter took place at, to wit, Noon, October 24, 1955, at the point already stated.

34 (b) (2) As of the time of answering these interrogatories and to the best of plaintiff's knowledge, the following:

B. M. Mitchell, c/o L&N Railroad Company, Evansville, Indiana.

C. E. Waelde, c/o L&N Railroad Company, Montgomery, Alabama.

"Jody" Johnston, c/o L&N Railroad Company, Birmingham, Alabama.

A. R. Thomas, Jr., Defendant.

C. S. Hawkins, 1269 Park Avenue, Tarrant, Alabama.

Bruce Barnett, 4146 38th Avenue North, Birming- Alabama.

34 (b) (3) Answered.

34 (c) Answered.

34 (d) Answered.

35 (A) Yes.

35 (b) (1) At about 5:00 P.M. October 23, 1955, at the home of H. K. (Shorty) Parker. 3024 41st Way North, Birmingham, Alabama.

35 (b) (2) For answer to this interrogatory plaintiff refers to and adopts the answer given to Interrogatory No. 2 (b) (2) above.

35 (b) (3) Letchman was present at the meeting at which the conspiracy was decided upon, and remained until the decision had been made and agreed upon. Thereafter, he failed to report for work at any time during the strike. Plaintiff cannot, as of this

time, supply the specific words used by Letchman to indicate his agreement with the plan.

35 (b) (4) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (4), above.

35 (b) (5) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (5) above.

35 (b) (6) Answered.

36 (a) With the exception of the act described in answer to Interrogatory No. 34, above, plaintiff knows of no personal and individual acts committed by Letchman, as distinguished from those committed by his co-conspirators, agents and abettors.

36 (b) Answered.

37 (a) W. C. Burnett is not a party defendant to this suit. According to plaintiff's present knowledge, information and belief he had no part in the matters which are the subject matter of the suit.

37 (b) (1) (2) (3) Answered.

37 (c) Answered.

37 (d) (1) (2) (3) Answered.

38 (a) Answered.

38 (b) (1) (2) (3) (4) (5) (6) Answered.

39 a Answered.

39 (b) Answered.

40 (a) Yes.

40 (b) For partial answer to this interrogatory, plaintiff refers to and adopts the answer given to Interrogatory 1 (b) above. Further answering this interrogatory, plaintiff says:

For additional answer to this interrogatory, plaintiff says that A. R. Thomas, Jr. was one of the principal ring-leaders and agitators of the "wild-cat" strike, and was spreading word about it and making preparations for it before the meeting at Parker's home on Sunday, October 23, 1955, was held. On Saturday morning, October 22, 1955, he and C. L. McCutcheon, another defendant, sent a threatening message to L. C. Parrett, an employee of plaintiff, through defendant, R. A. Sutterlin. On the same day, A. R. Thomas, Jr., J. B. Otts, Jr. and C. L. McCutcheon agreed to procure picket signs for use in the wild-cat strike, which signs plaintiff is informed, were subsequently obtained by A. R. Thomas and transported to its premises in his blue Dodge convertible automobile Thomas attended the meeting at H. K. (Shorty) Parker's home on Sunday afternoon, October 23, 1955, and was active as an advocate of calling a strike immediately. Soon after he left this meeting, at 5:53 P. M. Sunday, October 23, 1955, upon the pretext that he was sick, he laid off his job assignment. At about 8:30 P.M. on that date, he joined other conspirators on the property of the plaintiff at its' Boyles Yard, and participated with others in picketing and spreading state-

ments that a strike had been called among employees on their jobs and those who subsequently reported to go to work. He remained at the Boyles Yard the entire night, and on the following day went to the premises of plaintiff on Morris Avenue, where he remained with a large number of others for several hours during the forenoon at or near the entrance to the office building. During this time he blocked several persons, members of the public and employees from entering the building, used profane and threatening language, and forbade and prevented them from entering the premises on the ground that a strike was going on. He pushed one employee backward while the latter was attempting to enter. Later in this day he, in company with others who were members of the conspiring group, blocked the Master Machanic's gate at Plaintiff's Boyles Yard with an automobile, intercepted two officials of the plaintiff attempting to enter its premises to look after live-stock and perishable property using profane language and threats to them, in substance that they would only permit them to go into the yard for 30 minutes, and if they were not out by the end of that time they would come in and get them. On October 24, 1955, Thomas warned three engineers not to take their engines out as long as the strike was in progress. On this date, he also took part in posting pickets at Boyles, instructing one or more men to identify anyone who went into the yard.

40 (b) (1) For partial answer to this interrogatory, plaintiff refers to and adopts the answer given to interrogatory (1) (b) (1) above. More specifically, among many others, the names of whom plaintiff at the present stage of its investigation is not yet in a position to supply, persons accosted and intimidated include B. M. Mitchell, c/o L&N Railroad Company,

Evansville, Indiana, C. E. Waelde, c/o L&N Railroad Company, Montgomery, Alabama, H. G. Breetz, c/o L&N Railroad Company, Louisville, Kentucky, all on October 24, 1955, the first two at Boyles at, to wit, 12:00 Noon, and the last at 1909 Morris Avenue, Birmingham, during the forenoon. Trainmaster Mitchell and Assistant Trainmaster T. M. Waelde were prevented from performing any duties until after the strike ended. Mr. Breetz was prevented from having an important conference with the Division Superintendent regarding the serious situation caused by the strike, both as to passengers unable to reach their destinations and industries in Birmingham and elsewhere being damaged and crippled in their operations by not being able to ship or receive freight.

40 (b) (2) As of the time of answering these interrogatories and to the best of defendant's knowledge, the following:

B. M. Mitchell, c/o L&N Railroad Company, Evansville, Indiana.

C. E. Waelde, c/o L&N Railroad Company, Montgomery, Alabama.

H. G. Breetz, c/o L&N Railroad Company, Louisville, Dentucky.

C. A. Schilleci, 1627 16th Avenue South, Birmingham Alabama.

"Jody" Johnson, c/o L&N Railroad Company, Birmingham, Alabama.

R. H. Letchman, Defendant.

C. S. Hawkins, 1260 Park Avenue, Tarrant, Alabama.

Bruce Barnett, 4146 38th Avenue North, Birmingham, Alabama.

J. V. Saab, 2365 23rd Street (Ensley) Birmingham, Alabama.

Claude J. Johnston, 1512 Valley Avenue, Birmingham, Alabama.

H. D. Camp, 1330 17th Avenue, South, Birmingham, Alabama.

40 (b) (3) Answered.

40 (c) Yes.

40 (d) (1) Answered.

40 (d) (2) As of the time of answering these interrogatories and to the best of plaintiff's knowledge, the following:

B. M. Mitchell, c/o L&N Railroad Company, Evansville, Indiana.

C. E. Waelde, c/o L&N Railroad Company, Montgomery, Alabama.

E. D. Love, c/o L&N Railroad Company, Louisville Kentucky.

H. G. Breetz, c/o L&N Railroad Company, Louisville, Kentucky.

E. F. Robertson, 1906 Beech Avenue, Nashville, Tennessee.

C. L. McCutcheon, Defendant.

C. F. Hobson, 1716 Oak Street, N W., Birmingham, Alabama.

Jack Petersen, 1719 11th Avenue South, Birmingham, Alabama.

C. A. Schilleci, 1627 16th Avenue, South, Birmingham, labama.

L. C. Jordan, 1431 Sloan Avenue, Tarrant, Alabama.

S. W. Street, 1614 43rd Street W., Birmingham, Alabama.

"Jody" Johnson, c/o L&N Railroad Company, Birmingham, Alabama.

R. H. Letchman, Defendant.

C. S. Hawkins, 1209 Park Avenue, Tarrant, Alabama.

E. L. Sexton, 4624 Avenue U, Birmingham, Alabama.

J. B. Otts, Jr., Defendant.

Edward Dorrity, 6715 First Avenue E., Birmingham, Alabama.

Bruce Barnett, 4146 30th Avenue, North, Birmingham, Alabama.

Ervin Rich, Route 12, Box 1370, Center Point, Alabama.

R. A. Sutterlin, Defendant.

R. L. Lathem, 1741 Princeton Avenue, Birmingham, Alabama.

J. C. Laney, 4208 Greenwood Street, Birmingham, Alabama.

E. R. Adams, 5009 43rd Place, North, Birmingham, Alabama.

J. V. Saab, 2365 23rd Street (Ensley), Birmingham, Alabama.

Claude J. Johnston, 1512 Valley Avenue, Birmingham, Alabama.

T. M. McCormick, 1609 Woodward Drive, Tarrant, Alabama.

J. F. Doster, 4200 50th Avenue, North, Birmingham, Alabama.

R. O. Spencer, 1420 Gulfport (Wylam) Birmingham, Alabama.

H. D. Camp, 1330 17th Avenue, South, Birmingham, Alabama.

P. R. Wilhite, 137 Green Springs Avenue, Birmingham, Alabama.

J. T. Norris, 813 42nd Place, North, Birmingham, Alabama.

H. K. Parker, Defendant.

L. C. Parrett, Route 6, Box 57, Birmingham, Alabama.

40 (d) (3) At the present stage in its investigation, which is still in progress as to this defendant, as well as to all other defendants and additional persons who were involved with them in carrying out the conspiracy, plaintiff is not able to answer more specifically than has been stated in answer to Interrogatory 40 (b) above.

41 (a) Yes.

41 (b) (1) In addition to his activity in the preliminary stages of the strike, A. Reese Thomas present throughout the meeting at the home of H. K. (Shorty) Parker, on Sunday afternoon, October 23, 1955, at which, at about 5:00 P.M. the conspiracy was definitely formed.

41 (b) (2) For answer to this interrogatory plaintiff refers to and adopts the answer given to Interrogatory No. 2 (b) (2) above.

41 (b) (3) This defendant not only agreed with the others to form the conspiracy but was one of the principal advocates and leaders in the forming of it. He stated, in urging the prompt starting of a strike, that if the company was allowed to get away with abolishing the outside hostler helper jobs the next thing they would do would be to abolish the firemen's jobs; that it was time to "pull the pin" and get the strike started that night; and in response to a suggestion that the matter might be taken up through the method called for by the collective bargaining contract and the Railway Labor Act, he said "Hell, no. That might take a year or two." Thereafter, Thomas was active in supporting the conspiracy throughout the period of the strike, as stated above.

41 (b) (4) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (4) above.

41 (b) (5) Plaintiff refers to and adopts as its answer to this interrogatory the answer given to Interrogatory No. 2 (b) (5) above.

41 (b) (6) Answered.

42 (a) Answered.

42 (b) Answered.

LOUISVILLE & NASHVILLE
RAILROAD COMPANY,
By CONRAD BUFFINGTON.

State of Alabama,
Jefferson County.

Personally appeared before me, the undersigned authority in and for said County in said State, Conrad Buffington, who is known to me, and who being by me first duly sworn upon his oath deposes and says that he is agent of plaintiff, Louisville and Nashville Railroad Company, duly authorized to make this affidavit, and that the statements contained in the foregoing answers to interrogatories are true and correct, to the best of his knowledge, information and belief.

CONRAD BUFFINGTON.

Sworn to and subscribed before me this 25th day of April, 1956.

LUCILE ADAMS,
Notary Public.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been served upon Jackson, Rives & Pettus, & Peterson Attorneys for defendants J. M. Brown, Jr., J. B. Otts, Jr., H. K. Parker, O. L. McCutcheon, W. L. Grissom, J. M. Weldon, H. E. Southerland, M. L. Hall and R. A. Sutterlin, by mailing a copy to them, postage prepaid, properly addressed to their office in the Massey Building, Birmingham 3, Alabama.

This April 25, 1956.

WHITE GIBSON, JR.,
Of Counsel for Plaintiff.

MOTION TO DROP T. A. KENNEDY AS PARTY DEFENDANT.

Filed July 29, 1966.

(Title Omitted.)

Comes the plaintiff in the above styled cause and shows to the Court the following:

1. At the time of filing the original complaint in this cause, plaintiff was informed that the paralyzing work stoppage on its lines in October of 1965 directly resulted from and was caused by the conspiracy and concerted action of all of those persons present at a meeting held at the home of defendant, H. K. Parker, on the afternoon of October 23, 1965 and that among those present at said meeting was defendant T. A. Kennedy.

2. During the pendency of this suit, plaintiff has conducted an extensive investigation into the work stoppage, the effects thereof as well as the circumstances leading thereto and has as part of said investigation taken the depositions upon oral examination of virtually all of the defendants as well as others with knowledge of the conspiracy and intimidation employed in carrying out the unlawful combination of the defendants.

3. As a result of said examination and investigation plaintiff has learned that defendant T. A. Kennedy while present at the aforesaid meeting at the home of H. K. Parker at said time did, in fact, attend said meeting for the primary purpose of dissuading

those present from bringing about the work stoppage there agreed upon and to prevent, if possible, a conspiracy to utilize the means of violence, threats of violence and intimidation to wrongfully injure the plaintiff. Plaintiff is further informed as a result of said investigation that upon observng the failure of his efforts to prevent those present from joining in such combination, defendant T. A. Kennedy excused himself from the said meeting and left, taking no further part in the work stoppage or the illegal activities participated in by other defendants designed to carry the same out.

Wherefore, plaintiff in the interest of justice and fairness to the said defendant, T. A. Kennedy, moves the Court to permit the said T. A. Kennedy to be dropped and struck as a party defendant to this cause and to go hence without day and plaintiff further moves the Court to permit or require it to file such amended pleadings as may to the Court appear proper or just under the circumstances.

WHITE E. GIBSON, JR.,
JAMES A. SIMPSON,
ROBERT McD. SMITH,
Attorneys for Plaintiff.

H. G. BREETZ,
GIBSON & GIBSON,
Comer Building,
Birmingham, Alabama.

LANGE, SIMPSON, ROBINSON & SOMERVILLE,
1023 Frank Nelson Building,
Birmingham, Alabama,
Of Counsel.

Certificate of Service.

I hereby certify that a copy of the foregoing motion to drop T. A. Kennedy as party defendant has been served upon Hon. R. Macey Taylor, attorney for defendants for whom he appears, by mailing a copy, postage prepaid, to his office in the Frank Nelson Building, Birmingham, Alabama, this 27 day of July, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff.

Certificate of Service.

I hereby certify that a copy of the foregoing motion to drop T. A. Kennedy as party defendant has been served upon Hon. Clifford Fulford, attorney for defendants for whom he appears, by mailing a copy, postage prepaid, to his office in the Massey Building, Birmingham, Alabama, this 27 day of July, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff.

Certificate of Service.

I hereby certify that a copy of the foregoing motion to drop T. A. Kennedy as party defendant has been served pon Hon. Clifford Fulford, attorney for defendant T. A. Kennedy, by mailing a copy, postage prepaid, to his office in the Frank Nelson Building, Birmingham, Alabama, this 27 day of July, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff.

8/16/56—Upon consideration amendment to drop T. A. Kennedy as party defendant is granted, and said T. A. Kennedy be and he hereby is dismissed as a party defendant.

H. H. GROOMS,
U. S. District Judge.

MOTION BY PLAINTIFF TO BRING IN ADDITIONAL PARTIES.

Filed July 30, 1956.

(Title Omitted.)

Plaintiff moves the Court for an order permitting it to make Bruce Barnett, J. O. Bentley, William F. Pennington, H. D. Dismukes, Arthur E. Hicks, J. B. Byram, Howard Eugene Anderson and Oliver C. Breedlove parties defendant in this cause; directing that proper process be issued and served upon each of said persons; and permitting and requiring plaintiff to serve and file summons and amended complaint to that end, and as grounds therefor, shows unto the Court as follows:

1. This is an action based upon an alleged wrongful interference with and injury to the business of the plaintiff, pursuant to a conspiracy and by means of causing a work stoppage of all of its employees at Birmingham, Decatur, Montgomery and intervening points on its lines.

2. The proposed additional defendants, Bruce Barnett, J. O. Bentley William F. Pennington, H. D. Dismukes, Arthur E. Hicks and J. B. Byram, joined in the execution of and participated in furthering the objects of said conspiracy by bringing about the stoppage of work by plaintiff's employees at plaintiff's places of business in Decatur, Alabama, and Montgomery, Alabama.

3. The proposed additional defendant, Howard Eugene Anderson, was a participant in the formation and subsequent execution of the conspiracy.

4. The proposed additional defendant, Oliver C. Breedlove, joined in the execution and participated in furthering the objects of said conspiracy by soliciting and obtaining pickets or persons to post themselves at entrances to plaintiff's premises and to assist in continuing said work stoppage.

5. Each of said proposed additional defendants is a resident citizen of Jefferson County, Alabama, is subject to the jurisdiction of this Court, both as a venue and service of process, and each can be made a party defendant herein without depriving this Court of jurisdiction.

6. At the time of filing the original complaint in this cause, plaintiff was not fully informed with respect to the activities of the aforesaid additional defendants and has become informed thereof following extensive investigation accompanied by the taking of depositions of the original defendants and others.

WHITE E. GIBSON, JR.,
JAMES A. SIMPSON,
ROBERT McD. SMITH,
Attorneys for Plaintiff.

H. G. BREETZ,
GIBSON & GIBSON,
Comer Building,
Birmingham, Alabama.

LANGE, SIMPSON, ROBINSON & SOMERVILLE,
1023 Frank Nelson Building,
Birmingham, Alabama,
Of Counsel.

Certificate of Service.

I hereby certify that a copy of the foregoing motion by plaintiff to bring in additional parties has this day been mailed, postage prepaid, to Hon. R. Macey Taylor, attorney for defendants for whom he appears, at his office in the Frank Nelson Building, Birmingham, Alabama, this 27 day of July, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff.

Certificate of Service.

I hereby certify that a copy of the foregoing motion by plaintiff to bring in additional parties has this day

been mailed, postage prepaid, to Hon. Erle Pettus, Jr., attorney for defendants for whom he appears, at his office in the Massey Building, Birmingham, Alabama, this 27 day of July, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff.

8/16/56—Upon consideration plaintiff's motion to amend bringing in additional parties granted, and process is directed to be issued to the enumerated parties, as parties defendant to this cause.

H. H. GROOMS,
U. S. District Judge.

MOTION TO CONSTRUE PRE-TRIAL ORDER.

Filed Aug. 10, 1956.

(Title Omitted.)

Comes the plaintiff in the above styled cause and moves the Court to construe its pre-trial order of February 1, 1956 so as to permit plaintiff to prove, in addition to all other elements of damages allowable in said cause, the following elements of damages specifically enumerated.

1. Loss of profits to plaintiff resulting from work stoppage of October 23 to October 26, 1955.

2. Extra costs incurred by plaintiff in handling transportation around strike-affected area due to work stoppage of October 23 to October 26, 1955.

3. Additional per diem charges on cars belonging to other lines incurred by plaintiff as a direct consequence of the work stoppage of October 23 to October 26, 1955 together with loss of use of its own cars.

Plaintiff files the foregoing motion without taking the position that any of the items charged are properly designated "special damage" but in order to eliminate any question as to the applicability of Rule 9(g) of Federal Rules of Civil Procedure.

In the event the Court deems that plaintiff has prayed for inappropriate relief herein in asking for a construction of said order plaintiff, in the alternative, moves that the Court amplify its said pre-trial order so as to specify as elements of damages provable by it, in addition to all other elements of damages legally provable in said cause, the foregoing items set forth herein.

JAMES A. SIMPSON,
ROBERT McD. SMITH,
Attorneys for Plaintiff.

Of Counsel:
H. G. BREETZ,
GIBSON & GIBSON,
Comer Building,
Birmingham, Alabama.

LANGE, SIMPSON, ROBINSON
& SOMERVILLE,
1023 Frank Nelson Building,
Birmingham, Alabama.

Certificate of Service.

I hereby certify that a copy of the foregoing motion has been served upon Hon. R. Macey Taylor, attorney for defendants for whom he appears, by mailing a copy, postage prepaid, to his office in the Frank Nelson Building, Birmingham, Alabama, this 10 day of August, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff.

Certificate of Service.

I hereby certify that a copy of the foregoing motion has been served upon Hon. Erle Pettus, Jr., attorney for defendants for whom he appears, by mailing a copy, postage prepaid, to his office in the Massey Building, Birmingham, Alabama, this 10 day of August, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff.

Certificate of Service.

I hereby certify that a copy of the foregoing motion has been served upon Hon. Clifford Fulford, attorney for defendant T. A. Kennedy, by mailing a copy, postage prepaid, to his office in the Frank Nelson Building, Birmingham, Alabama, this 10 day of August, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff.

ORDER AMENDING PRE-TRIAL ORDER OF FEBRUARY 1, 1956.

Filed August 31, 1956.

(Title Omitted.)

This cause, coming on to be heard, was submitted to the Court on the plaintiff's motion to construe the pre-trial order of February 1, 1956. After due consideration of plaintiff's said motion and of oral statement of plaintiff's counsel, the Court is of the opinion that the plaintiff's motion should be granted.

It is, therefore, Ordered, Adjudged and Decreed by the Court that the plaintiff's motion be granted and that the pre-trial order heretofore entered in this cause on February 1, 1956, be and the same is considered as amended in order to allow the plaintiff to prove in addition to the elements of damages allowable in this cause the elements of damages specifically enumerated in paragraphs 1, 2 and 3 of plaintiff's said motion.

Done and Ordered, this 29 day of August, 1956.

H. H. GROOMS,
United States District Judge.

ANSWER AND DEFENSE.

Filed Sept. 5, 1956.

(Title Omitted.)

Come Bruce Barnett, William F. Pennington, Howard Eugene Anderson and Oliver C. Breedlove, sepa-

rately and severally, defendants in the above styled cause by their attorneys and for answer and defense to the complaint as amended set down the following, separately and severally, to-wit:

First Defense.

The complaint, as amended, fails to state a claim upon which relief can be granted.

Second Defense.

The complaint, as amended, fails to state a claim upon which relief can be granted for that complaint fails to allege prior resort to and exhaustion of its administrative remedy by plaintiff.

Third Defense.

The complaint, as amended, fails to state a claim upon which relief can be granted for that said complaint fails to allege that plaintiff has made prior resort to the National Railroad Adjustment Board.

Fourth Defense.

Defendants aver that at all times as alleged in the complaint, as amended, plaintiff was a railroad carrier and the defendants were employees of said plaintiff carrier subject to the Railway Labor Act and defendants aver that the dispute or controversy as alleged in the complaint, as amended, between plaintiff carrier and its employees, defendants herein, is within the primary exclusive jurisdiction of the National Railroad Adjustment Board under the Railway Labor

Act and that this Court has no jurisdiction of said dispute or controversy until plaintiff has exhausted its remedy before said National Railroad Adjustment Board.

Fifth Defense.

Defendants aver that at all times as alleged in the complaint, as amended, defendants were employees of plaintiff carrier subject to the Railway Labor Act under a collective bargaining agreement, a copy of which is hereto attached and marked Exhibit A and made a part hereof as if fully set forth herein; and defendants aver that on or about, to-wit, October 23, 1955, a shut down or work stoppage occurred on plaintiff carrier's lines in Jefferson County, Alabama, as a spontaneous demonstration by about 2500 employees of said plaintiff carrier and defendants aver, upon information and belief, that such demonstration indicated disapproval of an order published by plaintiff a few days prior thereto abolishing the jobs of holster helpers in plaintiff's Boyles Yard at Birmingham, Alabama, contrary to the provisions of said collective bargaining agreement and contrary to the provisions of the Railway Labor Act, as amended; and defendants aver that the dispute or controversy between plaintiff and defendants is within the primary exclusive jurisdiction of the National Railroad Adjustment Board and this Court has no jurisdiction thereof until plaintiff has exhausted said administrative remedy.

Sixth Defense.

Defendants aver that at all times as alleged in the complaint, as amended, defendants were employees of plaintiff subject to the Railway Labor Act under a collective bargaining agreement, a copy of which is attached hereto as Exhibit A; and defendants aver that on or about, to-wit, October 23, 1955, a shut down or work stoppage occurred on plaintiff's lines (which is the same as the shut down or work stoppage referred to in dismissed Counts One and Two) as a spontaneous demonstration against plaintiff's abolition of certain hostler helper jobs at Birmingham, Alabama, and defendants deny, separately and severally, any participation in causing said work stoppage which defendants are informed was a spontaneous protest against arbitrary unilateral action of plaintiff carrier in abolishing the craft of hostler helpers in Birmingham contrary to the provisions of said collective bargaining agreement and the provisions of the Railway Labor Act, as amended, and defendants aver that this matter is within the exclusive primary jurisdiction of the National Railroad Adjustment Board.

Seventh Defense.

Defendants aver that at all times alleged in the complaint, as amended, defendants were employees of plaintiff which is a common carrier engaged in interstate commerce subject to the Railway Labor Act and defendants aver that the Court has no jurisdiction of this cause for that plaintiff has failed to exhaust its administrative remedy before the National Railroad Adjustment Board under the Railway Labor

Act and defendants, separately and severally, deny each and every allegation of the complaint, as amended, not expressly admitted in this defense.

Eighth Defense.

Said count fails to state a claim upon which relief can be granted on the following grounds, separately and severally, to-wit:

(a) Said count fails to allege an exhaustion of administrative remedies before the National Railroad Adj. Board (NRAB).

(b) Said count fails to allege that there is an existing "no strike" provisions construed by the NRLB to be such.

(c) Said count shows affirmatively that the cause of action declared on is a labor dispute within the primary exclusive jurisdiction of the NRAB under the Railway Labor Act.

(d) Said count shows affirmatively that the defendant employees of plaintiff have the legal right intentionally to interfere with plaintiff's business by a strike or work stoppage and there are no allegations in said count negativing the exercise of such right.

(d) Said count fails to charge that the defendants or any two or more of the defendants entered into any illegal conspiracy against plaintiff.

(f) Said count fails to charge any actionable wrong against the defendants individually or collectively.

(g) Said count fails to charge any individual defendant with the commission of any actionable wrong.

(h) Said count fails to charge the defendants collectively with the commission of any actionable wrong.

(i) Said count fails to charge two or more of the defendants with an actionable conspiracy.

(j) Said count fails to state a cause of action in tort or in contract against the defendants or any of the defendants.

ERLE PETTUS, JR.,
FRANK O. BURGE, JR.,
Attorneys for Defendants,
Bruce Barnett, William F. Pennington, Howard Eugene Anderson and Oliver C. Breedlove.

Of Counsel:
JACKSON, RIVES, PETTUS
& PETERSON.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been mailed, postage prepaid, to James A. Simpson, Esq., c/o Messrs. Lange, Simpson, Robinson & Somerville, Frank Nelson Building, Birmingham, Alabama, as attorney for plaintiff.

This 4th day of September, 1956.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for said Defendants.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been mailed postage prepaid to R. Macy Taylor, Esq., Frank Nelson Building, Birmingham, Alabama, as attorney for defendants H. M. Baum, A. R. Thomas and R. H. Letchman.

This 4th day of September, 1956

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for said Defendants.

AMENDMENT TO COMPLAINT.

Filed Sept. 13, 1956.

(Title Omitted.)

Comes the plaintiff in the above styled cause and amends its complaint as most recently amended by correcting the name of one of the additional defendants added so as to change the name of said defendant from Arthur E. Hicks as the same now appears so that the name of said defendant shall read as follows:

Austin E. Hicks

said complaint remains in all other respects the same in this amendment.

ROBERT McD. SMITH,
Attorney for Plaintiff.

Of Counsel:
H. G. BREETZ,
MESSRS. GIBSON & GIBSON,
Comer Building,
Birmingham, Alabama.

LANGE, SIMPSON, ROBINSON
& SOMERVILLE,
1003 Frank Nelson Building,
Birmingham, Alabama.

Certificate of Service.

I hereby certify that a copy of the foregoing Amendment to Complaint has been served upon Hon. R. Macey Taylor, by mailing a copy, postage prepaid, to his office in the Frank Nelson Building, Birmingham, Alabama, this 12th day of September, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff.

Certificate of Service.

I hereby certify that a copy of the foregoing Amendment to Complaint has been served upon Hon. Erle Pettus, Jr., by mailing a copy, postage prepaid, to his office in the Massey Building, Birmingham, Alabama, this 12th day of September, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff.

ANSWER AND DEFENSE.

Filed September 24, 1956.

(Title Omitted.)

Come the defendants, J. M. Brown, Jr., J. B. Otts, Jr., H. K. Parker, J. M. Welden, O. E. Southerland, C. L. McCutcheon, W. L. Grissom, M. L. Hall and R. A. Sutterlin, by their attorneys and hereby amend the answer and defense heretofore filed by amending the Eighth Defense to read as hereinafter set forth and by adding th Ninth Defense as hereinafter set forth:

Amended Eighth Defense.

Said count fails to state a claim upon which relief can be granted on the following grounds, separately and severally, to-wit:

(a) Said count fails to allege an exhaustion of administrative remedies before the National Railroad Adjustment Board (NRAB).

(b) Said count fails to allege that there is an existing "no strike" provision construed by the National Railroad Adjustment Board to be such.

(c) Said count shows affirmatively that the cause of action declared on is a labor dispute within the primary exclusive jurisdiction of the National Railroad Adjustment Board under the Railway Labor Act.

(d) Said count shows affirmatively that the defendant employees of plaintiff have the legal right intentionally to interfere with plaintiff's business by a strike or work stoppage and there are no allegations in said count negativing the exercise of such right.

(e) Said count fails to charge that the defendants or any two or more of the defendants entered into any illegal conspiracy against plaintiff.

(f) Said count fails to charge any individual defendant with the commission of any actionable wrong.

(g) Said count fails to charge any actionable wrong against the defendants individually or collectively.

(h) Said count fails to charge the defendants collectively with the commission of any actionable wrong.

(i) Said count fails to charge two or more of the defendants with an actionable conspiracy.

(j) Said count fails to state a cause of action in tort or in contract against the defendants or any of the defendants.

Ninth Defense.

Defendants aver that at all times alleged in the amended complaint each defendant, except H. K. Parker, was a member of an association or organization participating or interested in a labor dispute between plaintiff and plaintiff's employees and each

defendant was an employee of plaintiff and defendants deny each and every averment of the amended complaint not herein expressly admitted in this defense.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for Defendants,
J. M. Brown, Jr., J. B. Otts, Jr., H. K. Parker, J. M. Weldon, H. E. Southerland, C. L. McCutcheon, W. L. Grissom, M. L. Hall and R. A. Sutterlin.

Of Counsel:
JACKSON, RIVES, PETTUS
& PETERSON.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been served upon James A. Simpson, Esq., c°o Messrs. Lange, Simpson, Robinson & Somerville. Frank Nelson Building, Birmingham, Alabama, as attorney for plaintiff.

This 24 day of September, 1956.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for said Defendants.

Certificate of Service.

I hereby certify that a copy of the foregoing has this day been served upon R. Macey Taylor, Esq., Frank Nelson Building, Birmingham, as attorney for defendants H. M. Baum, A. R. Thomas and R. H. Letchman.

This 24 day of September, 1956.

ERLE PETTUS, JR.,
Attorney for said Defendants.

AMENDED ANSWER.

Filed Sept. 24, 1956.

(Title Omitted.)

Now come the defendants, H. M. Baum, A. R. Thomas and R. H. Letchman and amend the answer heretofore filed in this cause by adding thereto an affirmative defense designated as Number 12:

12. The defendants aver that at all times referred to in the complaint as last amended, each of said defendants was a member of an association or organization of employees of the plaintiff participating in or interested in a labor dispute between plaintiff and plaintiff's employees and each of said defendants deny that they caused other employees of

plaintiff by means or threats of force or violence, not to perform their duties with the plaintiff.

R. MACEY TAYLOR,
(R. Macey Taylor),
Attorney for the defendants,
H. M. Baum, A. R.
Thomas and R. H.
Letchman.

Copy served on atty. for plaintiff Sept. 24, 1956.
R. MACEY TAYLOR.

ORDER OVERRULING MOTIONS TO DISMISS FILED BY CERTAIN OF THE DEFENDANTS.

(Title Omitted.)

It appearing to the Court that the answer of the defendants, J. M. Brown, Jr., J. B. Otts, Jr., H. K. Parker, J. M. Welden, H. E. Southerland, C. L. McCutcheon, W. L. Grissom, M. L. Hall and R. A. Sutterlin, filed on September 24, 1956, and that the answer of the defendants, Bruce Barnett, William F. Pennington, Howard Eugene Anderson and Oliver C. Breedlove, filed on September 5, 1956, have asserted various defenses which the Court considers in the nature of motions to dismiss. After due consideration thereof:

It is Ordered, Adjudged and Decreed by the Court that these said defenses, which are in the nature of motions to dismiss, filed on behalf of the above-named defendants be and the same are hereby over-

ruled as to Count Three of the complaint, as last amended.

Done and Ordered, this 25 day of September, 1956.

H. H. GROOMS,
United States District Judge.

Filed February 5, 1957.

In the District Court of the United States, Southern Division, Northern District of Alabama.

Louisville & Nashville Railroad Company, a corporation, Plaintiff,

vs.

J. M. Brown, Jr., et als., Defendants.

Case No 8171 S. Civil Action.

Birmingham, Alabama,
September 24, 1956, et sec.

Before: Hon. H. H. Grooms, Judge, and a Jury.

Appearances:

Messrs. Gibson & Gibson, by Mr. White Gibson, Jr., Messrs. Lange, Simpson, Robinson & Somerville, by Mr. James A. Simpson and Mr. Robert McD Smith, appearing for the Plaintiff.

Messrs. Jackson, Rives, Pettus & Peterson, by Mr. Erle Pettus, Jr. and Mr. F. O. Byrd; and Mr. R. Macey Taylor, appearing for the Defendants.

FLOYD L. FLEMING, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:

Q. Mr. Fleming, will you state your name to the jury, please?

A. Floyd L. Fleming.

The Court:

Talk out loud.

Q. Sir?

A. F. L. Fleming.

The Court:

That last gentleman down there wants to hear you, so you talk to him and the rest of them will be sure to hear you then.

The Witness:

All right.

Q. What is your business?

A. I am a car repair helper in Louisville, Kentucky.

Q. For what Company?

A. L&N.

Q. How long have you been employed by the L&N Railroad Company?

A. About 16 years.

Q. Did you ever live in Birmingham?

A. Yes, sir.

Q. Were you living in Birmingham last October?
A. Yes, sir.
Q. That is October, 1955?
A. Yes, sir.
Q. What were you doing at that time?
A. I was cut off then, working extra.
Q. You were working on the Extra Board?
A. Yes, sir.
Q. And doing what?
A. Labor, in the yard.
Q. Doing labor in the yard?
A. And hostler helper extra too.
Q. All right. Now, were you a member of the Brotherhood Locomotive Firemen and Enginemen?
A. No, sir, not at that time, no, sir.
Q. Not at that time?
A. No, sir.
Q. Had you ever been?
A. Yes, sir.
Q. Were you a member of any of the other Brotherhoods last October?
A. No, sir, not right then.
Q. You say you were not at that time?
A. No, sir.
Q. Mr. Fleming, were you at a meeting that was held on Sunday afternoon, October 23, at the home of Mr. H. K. Parker?
A. Yes, sir.
Q. Where were you when you first heard about the meeting going to be held?
A. I was out there at the Rex Cafe when I heard about it.
Q. Now then, tell the jury briefly where Rex Cafe is?

A. It is right cross the street in front of the L&N roundhouse.

Q. As you go away from town towards Tarrant, the L&N roundhouse is on which side?

A. On the left hand side, and Rex on the right hand.

Q. And as you go from Rex into the L&N roundhouse you cross I believe that is Vanderbilt Road, isn't it?

A. Yes, sir, Vanderbilt Road, yes, sir.

Q. Then there are two little bridges there, one is a foot bridge and the other is a vehicle bridge, is that right?

A. Yes, sir.

Q. Going into the L&N property?

A. Yes, sir.

Q. And as you get into the L&N property there you come to what offices or buildings?

A. That is the engineers and firemen's washroom.

Q. As you go across this little foot bridge you come to a little brick building, and that is where the engineers and the firemen washed up after they come in off a run?

A. Yes, sir.

Q. Keep their lockers in there, don't they?

A. Yes, sir.

Q. I believe in one end of that building there is the caller's office, is that right?

A. Yes, sir.

Q. He calls the crews?

A. That is the engine dispatcher's office in there.

Q. Engine dispatcher's office?

A. Yes, sir.

Q. And on beyond that I believe is the roundhouse, is it?

A. That's right, yes, sir.

Q. Now you say you were at Rex's place out there on Sunday afternoon?

A. Yes, sir.

Q. About what time was that?

A. Oh, about 2:30 or 3:00 o'clock I imagine.

Q. All right now, who did you see there, Mr. Fleming?

A. I saw McCutcheon.

Q. Mr. McCutcheon?

A. Yes, sir, Shorty Parker.

Q. Mr. H. K. Parker?

A. Yes, sir.

Q. Or Shorty Parker?

A. J. M. Weldon.

Q. J. M. Weldon?

A. Reese Thomas.

Q. Mr. A. R. Thomas or Reese Thomas?

A. Yes, sir.

Q. And who else did you see there?

A. J. B. Otts.

Q. Mr. J. B Otts?

A. Yes, sir.

Q. Now, I am talking about at Rex's place.

A. Yes, sir.

Q. You saw Mr. Otts, J. B. Otts, Jr there then?

A. J. M. Brown

Q. Mr, J. M. Brown, Jr.?

A. Yes, sir.

Q All right. Who else did you see around there that Sunday afternoon?

A. Well, there was a bunch of switchmen, but I don't know their names.

Q. Well, you do recall those that you mentioned though, do you?

A. Yes, sir.

Q. Now then did you have any discussion or any talk with them about a meeting at Shorty Parker's house?

A. No, sir. They told me to come down there to a meeting.

Q. Do you remember who invited you to the meeting?

A. McCutcheon.

Q. Mr. McCutcheon?

A. Yes, sir.

Q. Mr. McCutcheon invited you to come down to Shorty Parker's house?

A. Yes, sir.

Q. How far was it from there to Shorty Parker's house?

A. I guess about a mile from where we was, about a mile I think it was.

Q. About a mile?

A. Yes, sir.

Q. All right. Did you go to Parker's house that afternoon?

A. Yes, sir.

Q. How did you go?

A. In a car.

Q. Whose car?

A. I went with Reese Thomas and McCutcheon.

Q. Who drove the car?

A. Thomas.

Q. Mr. Reese Thomas?

A. Yes, sir.

Q. And Mr. McCutcheon and you went along in his car?

A. Yes, sir.

Q. Now, about what time did you get to Mr. Parker's house that afternoon?

A. About 4:00 o'clock I imagine, 4:15, or something like that.

Q. In the afternoon?

A. Yes, sir.

Q. On Sunday?

A. Yes, sir.

Q. All right. Where did you go when you got there?

A. Went down in the basement. He had a garage apartment and we went down in the basement.

Q. He had a garage apartment?

A. Yes, sir.

Q. That is living quarters on the first floor?

A. Yes, sir.

Q. And then it was built up high off the ground?

A. Yes, sir.

Q. And he had a garage in under the house?

A. That's right, yes, sir.

Q. All right now you went into the garage apartment?

A. Yes, sir.

Q. Or the garage under the house?

A. Yes, sir.

Q. And about how many men gathered in that garage that afternoon?

A. I imagine about 20.

Q. About 20?

A. Yes, sir.

Q. Can you name for us the men who gathered in there about 4:30 that Sunday afternoon?

A. Well, it was—

Q. That is I mean in addition to yourself now?

A. I was there, and McCutcheon.

Q. You say Mr. McCutcheon was there?

A. Yes, sir.

Q. All right.
A. Bill Grissom.
Q. And Mr. Grissom was there?
A. Reese Thomas.
Q. Mr. Reese Thomas was there?
A. Shorty Parker.
Q. Mr. Parker was there?
A. Baum, H. M. Baum.
Q. Mr. Baum was there?
A. M. L. Hall.
Q. Mr. M. L. Hall was there?
A. Ed Weldon.
Q. Was it Ed Weldon or J. M. Weldon?
A. I mean Jim Weldon.
Q. Mr. J. M. Weldon, all right?
A. Mr. Letchman
Q. Mr. Letchman was there?
A. Yes, sir, and Mr. Logan.
Q. Mr. Logan was there?
A. Vann.
Q. Logan and Vann were there?
A. And there was a fellow named Stuart I think was there.
Q. Mr. Stuart?
A. Yes, sir.
Q. All right.
A. And there was a brakeman or a conductor one off of the road. I don't know what his name is.
Q. All right. Can you remember any others offhand? I know it is hard to sit there on the witness stand under the excitement of being brought into Court and mention all of those names. But can you recall any others?
A. Howard Southerland.

Q. Mr. Southerland was there?
A. Anderson.

Mr. Pettus:
What was that?

Mr. Simpson:
Mr. Anderson.

A. Anderson.
Q. Mr. Anderson was there?
A. Yes, sir.
Q. All right.
A. That's about all I remember.
Q. These are the gentlemen that you see sitting here in this Courtroom, are they?
A. Yes, sir.
Q. The Defendants in this case?
A. Yes, sir.
Q. Bearing those names?
A. Yes, sir.

Mr. Simpson:
If I may, Your Honor, may I ask him if he saw certain individuals there? I don't want to lead him, but just to complete the list.

The Court:
You can ask him whether or not there were certain individuals there.

Mr. Simpson:
All right.

Q. I will ask you whether or not you saw Mr. J. M. Otts, Jr. there?

A. J. B. Otts?

Q Yes, J B. Otts, Jr. I mean

A. Yes, I have named him.

Q. Yes. I know you did. You saw Mr. Otts—I mean Mr. Brown, J. M. Brown, Jr., did you see him there?

A. Yes, sir.

Q. Was he there?

A. Yes, sir.

Q. Did you see Mr. Sutterlin there, R. A. Sutterlin?

A. No, sir, I don't remember seeing him there.

Q. You say you don't remember seeing him there?

A. No, sir.

Q. Did you see Mr. Kennedy there?

A. Yes, sir, I remember him.

Q. You saw Mr. Kennedy there?

A. Yes, sir.

Q. All right. Now, I will ask you whether or not you heard any of the men make any statement about what they had met there for that afternoon?

A. Yes, sir, they met there, they pulled off some hostler helpers jobs, and they met there to discuss it.

Mr. Pettus:

Your Honor, I have trouble hearing the witness. If he can talk up, I would like to hear what he said.

The Court:

Will you speak up? They can't hear you.

A. They had a discussion, they pulled off some helping jobs and they were discussing it.

Q. They were discussing the pulling off of the hostler helpers jobs?

A. Yes, sir.

Q. Outside hostler helpers?

A. That's right.

Q. Three of them?

A. Yes, sir.

Q. All right. Did you hear the Defendant, Reese Thomas, make a statement about what ought to be done?

A. Yes, sir.

Q. What did Mr. Thomas say?

A. He said we ought to pull the pin and get it over with.

Q. Now then, Mr. Fleming, in railroad language what does "Pull the pin" mean?

Mr. Taylor:
We object to that.

Q. What did you understand it to mean?

The Court:
Overruled.

Mr. Pettus:
We except.

A. That means quit right there, pull what they—

Mr. Taylor:
I can't hear what he said.

The Court:
Speak up.

A. That means pull the strike, what they were figuring on.

Mr. Pettus:

Now, we move to exclude that as not responsive.

The Court:

I sustain the motion. That is excluded, gentlemen.

Q. What did you understand "Pulling the pin" to mean?

A. That means to stop work.

Q. That means to stop work?

A. Yes, sir.

Q. All right. Mr. Reese Thomas said "Its time to pull the pin", you say?

A. Yes, sir.

Q. And did anyone then after that—first, did anybody act as sort of Chairman or stand up?

A. No, sir, everybody was just talking.

Q. Everybody was just talking around generally?

A. Yes, sir.

Q. Did somebody call for a show of hands on the question of whether or not they would "Pull the pin" then or not?

A. Yes, sir.

Q. Now then did they have a show of hands?

A. Yes, sir.

Q. What was it, what was the question they were holding up hands on?

A. They asked those in favor of it, everybody held up their hands.

Q. Everybody in favor of the strike, or "Pulling the pin", hold up their hand?

A. That's right, yes, sir.

Q. Now then can you tell me whether or not there were some people in there who did not hold up their hands?

A. Yes, sir, a few; one or two I know.

Q. All right, tell us those who did not hold up their hands.

A. I think it was Logan.

Q. Logan?

A. Yes, sir.

Q. All right.

A. Vann, I think it was Vann.

Q. Vann?

A. Yes, sir.

Q. All right.

A. Kennedy I think.

Q. Kennedy didn't hold up his hand?

A. No, sir.

Q. Did you hold up your hand?

A. No, sir.

Q. You were not, of course—

A. I was not involved in it.

Q. I see.

Mr. Pettus:

I didn't understand that last answer.

Mr. Simpson:

He said he wasn't involved in it.

Q. Did you see anybody else that you can now recall who did not hold up his hand?

A. No, sir.

Q. It is your best recollection, or is it your best recollection then that they all held up their hands except the men you mentioned?

A. That's right, yes, sir.

Q. Now then what was said about when they would put this—where they would meet?

Mr. Taylor:

If the Court please, can we ask Mr. Simpson not to lead the witness quite so strong?

The Court:

All right. Don't lead the witness. That is leading.

Mr. Simpson:

I will try not to, Your Honor.

Q. Was there anything said about where they would meet then after that?

A. Yes, sir, they were to meet down at Rex's Cafe about 8:30 that night.

Q. Now, who suggested that, if you remember?

A. I don't know who suggested that.

Q. You don't remember who suggested that?

A. No, sir, but that was where they were supposed to meet at.

Q. Did you hear that statement made there in the meeting?

A. Yes, sir.

Q. Rex's Cafe was the one you had just come from up to the meeting?

A. That's right.

Q. That is the one down at the roundhouse entrance, entrance to the roundhouse?

A. Yes, sir.

Q. Now what time did they say they would meet down there?

A. 8:30.

Q. At 8:30?

A. Yes, sir.

Q. Now then was there anything said there in that meeting, and if so what, about the question of picketing?

A. Yes, sir, they took names of who was going on picket duty.

Q. Who called for that? Did anyone ask that everybody who would picket hold up his hand?

A. No, sir, it wasn't that.

Q. How were the pickets selected?

A. They just wrote their names down on a paper.

Q. Now who was it that took down the list of pickets?

A. I think it was Anderson.

Q. Is that your best recollection, that Mr. Anderson did that?

A. Yes, sir.

Q. He took the list of those who volunteered for picket service?

A. That's right.

Q. Did you volunteer for picket service?

A. No, sir.

Q. Did anyone help Mr. Anderson in taking down the list of those who were going to picket?

A. I think Jim Brown did.

Mr. Taylor:

We object to that and move to exclude it if Your Honor please.

Q. What is your best recollection?

Mr. Taylor:

We object to that.

A. I think Jim Brown.

Mr. Taylor:
We object to anybody helping him do a certain thing.

The Court:
Overrule the objection. Don't ask leading questions.

Mr. Simpson:
Yes, sir.

The Court:
Is that your best knowledge?

A. Yes, sir.

Mr. Pettus:
We except.

Mr. Simpson:
I will state that again. The objection may have interfered with the people understanding.

Q. What did you say Mr. Brown did, if anything?
A. I think Brown helped Anderson take names, yes, sir.
Q. Take the names of whom now?
A. Men that were there.
Q. Men that were going to do what, if anything?
A. Picket duty.
Q. Men that were going to do picket duty?
A. Yes, sir.
Q. It is now your best recollection Mr. Anderson and Mr. Borwn were the men who took down those names?
A. Yes, sir.

Q. What time were you due to go back to work?
A. I wasn't working, I was cut off then.
Q. You were off?
A. I was cut off.
Q. Yes, that's right.
A. Yes, sir.
Q. You were on the Extra Board?
A. Yes, sir.
Q. Did you go back at anytime to see if there was any work available for you immediately after that Sunday night?
A. Yes. I went back the next day, the next morning.
Q. Do you know of your own knowledge what happened down there at the Boyles Yards at 9:00 o'clock on that Sunday night?
A. Yes, sir.
Q. All right, what did happen down there that night Mr. Fleming?

Mr. Pettus:
We object to that unless he was there, may it please the Court.

Mr. Simpson:
All right.

Q. Were you there, Mr. Fleming?
A. Yes, sir.

The Court:
I overrule the objection.

Q. All right, just tell us what happened, Mr. Fleming.
A. Well, it stopped, all the work, that's all.

Q. That was at the hour that you say, 9:00 o'clock?
A. 9:00 o'clock, yes, sir.
Q. Did you see how that was performed, how they did that?
A. No, sir, I wasn't in the Yard.
Q. You were not inside of the Yard?
A. No, sir.
Q. Where were you?
A. I was over there at Rex's Cafe.
Q. What happened around 9:00 o'clock that you did see? Now I understand you can only say what you saw yourself.
A. I just seen the men come out, coming off their job, and coming out.
Q. You say you saw the men coming off their jobs and coming out there then?
A. Yes, sir.
Q. Were they leaving the L&N property?
A. Yes, sir.
Q. About how many did you see coming out of that Yard at that entrance where you were that Sunday night about 9:00 o'clock?
A. I saw about 20 or 25.
Q. Did you know them?
A. Yes, sir, I knowed some of them.
Q. Were they L&N employees or not?
A. Yes, sir.
Q. Did you know what sort of work they did in the Yard?
A. Well, some of them was switchmen, some was engineers, brakemen, machinists, and electricians.
Q. You say you yourself saw some 25 come out on that Sunday night about 9:00 o'clock?
A. Yes, sir.
Q. Were they in their work clothes?

A. No, sir.

Q. Had they changed their clothes?

A. Yes, sir, they changed clothes, some of them had.

Q. Changed clothes and came out?

A. Yes, sir.

Q. Did you go back there at any time after that Sunday night?

A. I went back next morning.

Q. What did you see Monday morning?

A. Nothing, only a gang of men around there talking on the outside there.

Q. About how many men would you say were around there then?

A. About 30 or 40.

Q. Did anyone ask you to do picket duty at that time?

A. Yes, sir.

Q. Who asked you to do picket duty?

A. Breedlove.

Q. Mr. O. C. Breedlove?

A. Yes, sir.

Q. What did he say to you?

A. He wanted me to go downtown at the Passenger Station and do picket duty down there.

Q. That was down here in Birmingham?

A. Yes, sir, down in town.

Q. At the L&N Station?

A. Yes, sir.

Q. Did you hear him ask anyone else to do picket duty?

A. Yes, sir.

Q. Who else did he ask to do picket duty?

A. I heard him ask Ed Dougherty.

Q. Ed Dougherty?

A. Yes, sir.

Q. Did you yourself do any picket duty?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Mr. Fleming, were you personally afraid to go in the L&N Yards out there and offer to work after this?

A. I—

Mr. Pettus:

We object to that, if Your Honor please. It calls for an undisclosed mental operation, incompetent, irrelevant, and immaterial.

The Court:

I sustain the objection.

Mr. Simpson:

May it please the Court, may I go in and show his knowledge of the background of violence?

Mr. Pettus:

We object to that statement.

Mr. Simpson:

As a basis for this question?

Mr. Pettus:

We object to any statement of counsel without bringing the witnesses in. If he is going to argue, we would like the jury excused.

The Court:

I am not sure whether that is admissible or not. We will pass it for this time. I will reserve my ruling on it.

Mr. Simpson:

All right. You may take the witness.

Cross Examination.

By Mr. Pettus:

Q. Whose car was that that you went to Parker's house in, Mr. Fleming?

A. Mr. Thomas.

Q. Mr. Thomas?

A. Yes.

Q. And who else was in that automobile?

A. McCutcheon.

Q. McCutcheon?

A. Yes, sir.

Q. Was there anybody else in there?

A. No, sir.

Q. Just the three of you?

A. Three of us.

Q. What kind of an automobile was it?

A. It was a coupe, convertible; I don't know what make it was.

Q. You don't know what make it was?

A. No, sir.

Q. What time did you leave Rex's Barbecue?

A. It was about 4:15 I imagine.

Q. Now, how long before you left Rex's Barbecue was it that you saw Parker there at Rex's Barbecue that afternoon?

A. It was about an hour.

Q. About an hour?
A. Yes, sir.
Q. Then he had left?
A. Yes, sir.
Q. How about Mr. Weldon?
A. He was at Rex, yes, sir.
Q. Was he at Rex when you left?
A. We all went down there together.
Q. Was he in the same car now?
A. No, sir.
Q. You just testified a minute ago—
A. No, sir, but we all left together, the whole bunch.
Q. Was he in a different car?
A. Yes, sir.
Q. How about Mr. Thomas, he was with you, wasn't he?
A. Yes, sir.
Q. And what time did you see Mr. Otts at the Rex's Barbecue that afternoon?
A. About 3:00 o'clock I imagine.
Q. What time?
A. About 3:00.
Q. You are positive about that?
A. Yes, sir.
Q. At 3:00 o'clock that afternoon you saw Mr. J. B. Otts? Stand up, Mr. Otts. You are talking about this gentleman there (indicating)?
A. Yes, sir.
Q. You say you saw him at Rex's Barbecue that afternoon at 3:00 o'clock, is that right?
A. That's right.
Q. Was he in street clothes or work clothes?
A. Street clothes.

Q. In street clothes. Was he dressed like he is now?

A. No, sir.

Q. How was he dressed?

A. He had on pants and a shirt.

Q. He had on pants and a shirt?

A. Yes, sir.

Q. But he didn't have on his work clothes?

A. No, sir.

Q. You saw him at 3:00 o'clock that afternoon?

A. Yes, sir.

Q. How long did Mr. Otis stay there?

A. He went, he left when the rest of them did, going down to Parker's.

Q. In other words, he was about Rex's Barbecue from 3:00 to 4:00?

A. I imagine now.

Q. Then you went over to Parker's house, did you?

A. Yes, sir.

Q. Do you have a clear recollection of all those, these names that Mr. Simpson has called out as being there, do you remember that they were there at Parker's house yourself?

A. Yes, sir.

Q. You do?

A. Yes, sir.

Q. You are positive they were all there?

A. Yes, sir.

Mr. Simpson:

May it please the Court, I don't want to interrupt the gentleman, but there were only three names that I called out. The rest the gentleman called out himself.

Mr. Pettus:
I was asking about all three of those names.

Mr. Simpson:
All right.

Q. You are sure about all three of them, aren't you? You are sure all three of those gentlemen that he called out were there, is that right?
A. (No response.)
Q. You are not sure?
A. No, sir, I am not sure.
Q. You are not sure about it?
A. No, sir.
Q. Now which of these names are you not sure about, Mr. Grissom? Which ones are you not sure about?

Mr. Simpson:
Mr. Fleming.

Mr. Pettus:
I mean Mr. Fleming.

Q. Which ones are you not sure about?
A. (No response.)
Q. We want to know the names of those that you are sure were at that meeting.

The Court:
That was Logan, Vann, and Kennedy?

The Witness:
Logan, Vann, and—

Q. You are not sure that they were there, are you?

A. Logan was there, I know. I know him.

Q. You know Logan was there, is that right?

A. Yes, sir.

Q. You are positive Logan was there?

A. Yes, sir.

Q. You are not positive that Vann was there?

A. No, sir.

Q. You don't recall whether he was there or not?

A. I am not positive, no, sir.

Q. You are not positive?

A. No, sir.

Q. Mr. Kennedy, are you sure about him or not?

A. No, sir.

Q. In other words, did you talk to Kennedy there?

A. No, sir.

Q. And you do not recall whether Mr. Kennedy was there or not, is that right?

A. That's right.

Q. Now, were you there during the whole meeting?

A. I left—some was right—about half of them was there when I left.

Q. What's that?

A. About half of them was in the building when I left. Some of them had done gone.

Q. Some of them had gone?

A. Yes, some were still there.

Q. It was a meeting that was pretty informal, wasn't it? Everybody just standing around talking?

A. Yes, sir.

Q. Prior to that meeting, Mr. Fleming, had you seen a notice like this on the bulletin board (indicating), or had anybody told you anything like that was on the board?

A. Yes, sir, I seen it.
Q. You had seen that notice then?
A. Yes, sir.

Mr. Pettus:
We ask this be marked Defendants' Exhibit 1 for identification.

(Defendants' Exhibit No. 1 was marked for identification.)

Mr. Pettus:
I would like it back.

Q. Mr. Fleming, at the time that this notice was published were you doing outside hostler helpers work from time to time?
A. Yes, sir.
Q. You were not employed steadily by the Railroad, is that right?
A. No, sir, just on the Extra Board.
Q. You were on the Extra Board?
A. Yes, sir.
Q. At that time how much work were you getting a month, about?
A. About three or four days a month.
Q. About three or four days a month?
A. Yes, sir.
Q. Now did that continue through October? Did that continue, is that how much you were working through October, three or four days a month?
A. I was working in the back shop at that time, extra, as a laborer.
Q. Just as a laborer?
A. Yes, sir.

Q. Were you working full time up there?
A. No, sir, extra.
Q. As extra up there?
A. Yes, sir.
Q. When did you go to Louisville?
A. May 7.
Q. May 7?
A. Yes, sir.
Q. Of this year, 1956?
A. Yes, sir.
Q. Now while you were in Birmingham did you continue to work for the L&N?
A. No, sir, I was cut off.
Q. You were cut off?
A. Yes, sir.
Q. When were you cut off?
A. In—
Q. In January?
A. I was cut off in October.
Q. Cut off in October?
A. Yes, sir.
Q. Did you do any more work for the L&N here after you were cut off?
A. Yes, I done a little extra work.
Q. A little extra work?
A. Yes, sir.
Q. But say from January until May, that is when you went to Louisville, did you do any work?
A. No, I didn't do a thing.
Q. You didn't do anything?
A. No, sir.
Q. When did you talk to this ex-FBI Agent, Mr. Robey, for the L&N?
A. I don't know what date that was.
Q. That was some time in the spring, wasn't it?

A. Yes, sir, it was in the spring, but I don't know what date.

Q. Now you are working full time up in Louisville, aren't you?

A. I am now, yes, sir.

Q. Did you give a statement to Mr. Robey about this matter that you have testified to here, today, about?

A. Yes.

Q. Now after you gave him that statement did he tell you he was employed by the L&N Railroad Company, when you gave him that statement?

A. Yes, sir, he told me.

Q. He told you that he was?

A. Yes, sir.

Q. Now after you gave him that statement you were transferred to Louisville and are working full time up there now, is that correct?

A. That's right.

Q. Now in this notice, when they abolished the outside hostler helpers jobs—your seniority doesn't date back to 1922, does it?

A. No, sir.

Q. Or 1925?

A. No, sir.

Q. Or 1941?

A. Yes, sir.

Q. Is that right?

A. 1941.

Q. Is that when you were employed?

A. Yes, sir.

Q. Did McCutcheon rank you on the seniority list?

A. Yes, sir.

Q. He was ahead of you?

A. He was ahead of me, yes, sir.

Q. So then all of these men that were doing hostler helping work at that time, then ranked you on the seniority list?

A. Yes, all of them got age on me, yes, sir.

Q. They had age on you, and you only did work when they didn't work?

A. That's right.

Q. Now, Mr. Fleming, you are living at Louisville now?

A. Yes, sir.

Q. And all of your expenses are being taken care of by the L&N on this trip down here, aren't they?

A. I guess so, yes, sir.

Q. You assume that they are?

A. I assume that they are, yes, sir.

Q. Was your testimony refreshed this morning at a meeting at the L&N lawyer's office?

A. Yes, sir.

Mr. Pettus:

It was. That's all.

Re-Direct Examination.

By Mr. Simpson:

Q. To keep the record straight, where did you talk to me this morning, at my office or in the Courthouse?

A. No, I mean right out here in this office (indicating).

Q. The gentleman asked you about in my office.

A. I mean I talked to him out here in this office, right here in this building.

Q. Was there anybody present except you and me?

A. No, sir.

Q. There wasn't any meeting of any kind, was there?

A. No, sir, wasn't any meeting.

Q. I asked you what your testimony was going to be and you told me?

A. That's right.

Q. Right down the hall?

A. Second office here.

Mr. Simpson:

That's all.

Re-Cross Examination.

By Mr. Pettus:

Q. Mr. Fleming, did you attend a meeting at 8:00 o'clock at Mr. Gibson's office?

A. No, sir.

Q. You did attend that meeting this morning?

A. I met him up there.

Q. You met him up there in Mr. Gibson's office?

A. And he brought me down here, yes, sir.

Mr. Pettus:

I see. All right.

Re-Direct Examination.

By Mr. Simpson:

Q. That was the place where you people from out of town were told to come to?

A. That's what this paper says, meet at 8:00 o'clock at his office.

Q. All right. Now was there any discussion of this case or anything of that kind up there at that time?
A. No, sir, not a thing in the world.

Mr. Simpson:
Well, all right. That's all.

The Court:
All right, gentlemen. We are going to recess for lunch at this time. During the trial of this case do not talk about the case to anybody or talk about it among yourselves or permit anybody to talk to you about it. That warning will hold good all during the trial and during all the recesses. So, be back at 1:35.

(Whereupon, at 12:35 p. m. a recess was taken until 1:35 p. m., of the same day.)

Afternoon Session, 1:35 P. M.

The Court:
Call your next witness.

Mr. Simpson:
Mr. Edwards.

F. M. EDWARDS, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:
Q. State your name to the jury, Mr. Edwards.
A. Sir?

Q. State your name to the jury.
A. F. M. Edwards.
Q. Fred M. Edwards?
A. Fred M., yes, sir.
Q Where do you live?
A. Decatur.
Q. Did you ever live in Birmingham?
A. Yes, sir.
Q. How long since you lived in Birmingham?
A. Well, I think I went to Decatur along about '43 or '44, I am not certain.
Q. 1943 or 1944?
A. Yes, sir.
Q. Up to that time you lived here for a while?
A. Yes, sir.
Q. You have lived in Decatur continuously since '43 or '44?
A. Something like that, yes, sir.
Q. Who do you work for?
A. L&N.
Q. What do you do for the L&N?
A. Conductor.
Q. Freight or passenger?
A. Freight.
Q. Are you a member of any Railroad Brotherhood? If so, which Union?
A. I belong to the Brotherhood of Railroad Trainmen and Order of Railway Conductors.
Q. You belong to both those Unions?
A. Yes, sir.
Q. Did you belong to them in October, of last year?
A. Yes, sir.
Q. Were you in Birmingham on October 23, which was a Sunday, of 1955, that is last year?

A. Well, I guess I was.

Q. Do you remember when this wildcat strike occurred?

A. I don't remember the date.

Q. Were you in Birmingham on the day that this wildcat strike in October, of 1955 occurred?

Mr. Pettus:

We object to that terminology.

Mr. Simpson:

Whatever sort of strike you want to call it.

Q. Were you here?

A. I was here when they had the walkout.

Q. Walkout?

A. Yes, sir.

Q. Called it walkout?

A. Whatever it was, I was here that day.

Q. On that Sunday?

A. Yes, sir.

Q. It began on Sunday, didn't it?

A. That's what they say.

Q. All right, Mr. Edwards, where were you on that Sunday afternoon? You were living in Decatur at that time?

A. Yes, sir.

Q. Had you come down here on a run?

A. Yes, sir, I came in—the job I am on I come in one day and go right back out next morning to Nashville.

Q. I don't want to be leading you, but had you come in on your job that Sunday?

A. Yes, sir.

Q. What time did you get here?

A. It was early, about 1:30 or 2:00 or something like that.

Q. Where did you go when you got off your run and left the premises of the Company?

A. I went over to Boyles, I reckon you call it there, over there to the cafe, I believe you call it Rex.

Q. Rex's Barbecue?

A. Yes, sir.

Q. About what time were you around Rex's place that Sunday?

A. It must have been—it was after 3:00 o'clock or later.

Q. After 3:00?

A. Yes, sir.

The Court:

Now, was that in the afternoon?

The Witness:

Yes, sir.

Q. Did you see anybody there that you recall now?

A. Well, no, I didn't see nobody—two or three in there, but I didn't know them.

Q. You don't recall who they were?

A. No, sir.

Q. Did you leave Rex that afternoon?

A. Yes, sir.

Q. Where did you go?

A. I went to Kyle Parker's house.

Q. Mr. H. K. Parker?

A. Yes, Kyle is all I know, Kyle Parker.

Q. He is one of the Defendants. You see him sitting over there, do you?

A. Yes, sir.

Q. Ordinarily he is referred to among his friends as "Shorty" Parker, isn't he?

A. That's right.

Q. How long have you known Mr. Parker?

A. Well, I have been knowing him quite a while. I have known him since he was—away before he started railroading. I knew his father, I worked with his father, his father was an engineer. I have been knowing the boy a long time, I'll say back in the twenties.

Q. How did you get from Rex over to Mr. Parker's house?

A. I went over there with Jim Weldon.

Q. Now, is that Mr. J. M. Weldon?

A. Yes, sir.

Q. How long have you known Mr. Weldon?

A. Well, I've knowed the boy I guess—I have knowed his people, I knowed him when he was a little fellow. I knowed his daddy and his brothers. I didn't know him so well, only just seeing the boy. I have seen him when he was a little fellow, then when he come in there and went on the road, I think he come out of the Army or something. I didn't see the boy until I will say 3 or 4 years ago.

Q. You knew him well though?

A. Oh, I knew him when he was a little fellow, knowed all of his folks.

Q. You say you went over to Parker's house with Mr. Weldon?

A. Yes, sir.

Q. And did you two walk, or how did you go?

A. No, I went in his car.

Q. In his car with Mr. Weldon?

A. Yes, sir.

Q. Did anybody invite you to come to the meeting?

A. No, sir.

Q. Had you heard that there was going to be a meeting over there before you went over?

A. Yes, sir.

Q. Now tell us what was the first you heard about it, please, sir, Mr. Edwards?

A. The first I heard of it was some brakeman told me that he heard that there was going to be a meeting, the brakeman that come in with me.

Q. Your brakeman?

A. Yes, sir.

Q. What did he tell you?

A. He said "Fred, I heard that they are talking about a walkout or something", he said "They cut them hostlers pay", or something to that effect; I don't know. And he says "They are talking about they are going to do something about it."

Q. Did he tell you that there was a meeting that Sunday afternoon?

A. No, he didn't know there was a meeting I don't reckon. He didn't tell me.

Q. Did you hear anything about the meeting before you got to Rex's Barbecue?

A. No, sir.

Q. Who told you there that there was going to be a meeting?

A. That boy that was in there, Rollins boy, he said he heard that there was going to be a meeting, but he didn't know for certain.

Q. How come you to go over there?

A. Over to the Rex's?

Q. No, over to Mr. Parker's house.

A. - Well, I knew all—I knew this boy, I knew Jim, Jim come by there. I wanted to try to find out what they were going to do. If there was going to be a walkout or anything like that I was going home.

Q. You went over on your own initiative?

A. Yes, sir, nobody asked me. I went myself.

Q. When you got to Mr. Parker's place were you and Mr. Weldon the first ones to get there?

A. Oh, no, when we got there there was a crowd there. I don't remember of anybody coming after we got there.

Q. I see. When you got there where was the crowd?

A. They was down in the, I guess you would call it a basement, garage room.

Q. They were down in the basement of Mr. Parker's house?

A. Yes, sir, in the basement.

Q. Now, did you go in the meeting?

A. Yes, sir.

Q. Who did you see in the meeting that you now recall that you then knew?

A. Well, I saw Parker, Kyle, and I saw Mr. Jim—of course, I went down there with Jim.

Q. That is Mr. Weldon?

A. I seen J. B. Otts.

Q. You saw Mr. Otts, the gentleman sitting right over there?

A. Yes, sir.

Q. In the middle?

A. And I saw Reese Thomas.

Q. Reese Thomas?

A. Yes, sir, there was several more men there but I didn't recognize them.

Q. Yes, but you do recall having seen Mr. Otts, Mr. Seese Thomas, and, of course, Mr. Weldon and Mr. Parker and yourself?

A. Yes, sir, I saw them.

Q. What was discussed in the meeting?

A. Well, I just—I never heard too much. I talked to Parker and we talked about different things. Now he was showing me some dog kennels that he had built under there.

Q. Were the dog kennels in the garage or outside of the garage?

A. They was in the garage.

Q. They were in the garage?

A. He had it fixed where he could watch them.

Q. We are not interested, of course, in the dog kennels.

A. Well, you asked me what we was talking about.

Q. All right.

A. I was trying to tell you.

Q. All right. After you got through talking about the dog kennels, how long did that meeting last?

A. Well, I should think it broke up around a little after 5:00. I imagine it was 4:00 or later when we got down there. I know that I caught the 6:30 car out there at the Yards, streetcar or bus. I come back down there, and I had to get my bag, and I caught that bus, but I imagine we left down there some time after 5:00.

Q. Some time after 5:00?

A. Yes, sir.

Q. Did you take any part by voting on anything in the meeting?

A. No, sir, I didn't vote. I didn't see nobody vote.

Q. You didn't take any part in the meeting at all?

A. No, no more than just being there.

Q. Will you tell the jury whether you can tell us what any particular man said in that meeting?

A. Well, I never heard—they was talking, different ones was talking, you know.

Q. Well, now, what I want to know is can you tell us what any particular man said? If so, we would appreciate your doing it.

A. Well—

Q. That is in the meeting?

A. No, I never heard—well, I heard Mr. Otts say something. He was talking to some of the fellows there something about, they was talking about they didn't think the Railroad had done right about cutting these men's wages, they ought to cut the jobs off if they wanted to do it, or something to that effect. He said "If we do anything, we are going to kind of be on our own", or something to that effect. Now, that's what I understood him to say.

Q. That is Mr. J. B. Otts?

A. Yes, sir.

Q. Whom you knew at the time?

A. I have been knowing him a good while; I have worked with him.

Q. "And wha. we do is going to be on our own"?

A. Yes, sir, now that's the way I understood it.

Q. All right. Now did you hear anybody get up there and—this is probably leading. I won't ask you that. You have told us all you can remember that was said in the meeting, is that right?

A. Yes, sir, I never—

Q. All right, we won't belabor that. I will ask you one more question. Do you now recall any particular statement that was made by any other man except

the one you have told us about by Mr. Otts inside of the meeting?

A. No, sir.

Q. All right, we will pass on.

A. No, sir.

Q. Who did you leave the meeting with?

A. Jim. He carried me back down there where I got my things.

Q. All right. Now did you discuss with him what had occurred? Did you have a discussion with Mr. J. M. Weldon leaving there?

A. Yes. When we started back I asked Jim, I says "Jim, what do you think its going to do?" Well, he says "I don't know", or something to that effect. He says "It looked like we are going to walk out tonight or tomorrow", and he says to me, says, "Fred, you belong to the Trainmen, don't you?" I said "Yes, sir." Well, he says "You get hold of your Local Chairman and tell him."

Q. And tell him what?

A. Well, that's what he said. I guess they figured on a walkout. I told him, I says "Jim, I don't know his number, and I would have to—I ain't got much time to catch this train if I am going home, and I am not going to call him", because I didn't know the man's number. That is the Trainmen's Local Chairman, Mr. Price.

Q. Mr. Price?

A. I didn't even know where he lived.

Q. Mr. Price was your Local Chairman here in Birmingham?

A. Of the Trainmen, yes, sir.

Q. You are a member of the Trainmen?

A. Yes, sir.

Q. Mr. Weldon asked you to get hold of the Chairman of the Trainmen and tell him that they were coming out?

A. Well, he said—he didn't—he just asked me if I would do it.

The Court:

Who was this? What man was this, Mr. Weldon?

The Witness:

Yes, sir.

Mr. Simpson:

Mr. Weldon, one of the Defendants, yes, sir.

A. He just left that up to me, and I told him, says, "No, Jim, I don't know his number." He didn't say no more about it. He told me, says "I'll carry you on down to the train", or something, and I said "No, I've got to go over there and get my bag." My bag was on the caboose. I had done packed my little old bag because I had done laid off.

Q. You laid off?

A. When I got in I laid off.

Q. You were sick?

A. No, I got mad and laid off. It didn't have nothing to do with the firemen. I laid off up at the Yard Office.

Q. I see. It had nothing to do with this situation we are talking about you say?

A. No, sir, not a thing.

Q. He told you they might be coming out that night?

A. Yes, sir.

Q. What time that night did he say they might be coming out?

A. Well, I don't know what time he said it looked like they might be coming out. I said "Jim, what do you think they are going to do, what are you going to do?" He said "I don't know", or something, "We are trying to"—"Looks like we'll come out tonight or in the morning."

Q. Did he say what time that night, if they came out that night?

A. I think he said 9:00 o'clock.

Q 9:00 o'clock?

A. Yes, sir.

Mr. Simpson:

All right, you can have the witness.

The Witness:

I am not sure of that, I'm thinking it was 9:00 o'clock.

Mr. Simpson:

You can have the witness.

Cross Examination.

By Mr. Pettus:

Q. Was there any definite discussion for the next day had with Mr. Weldon?

A. Sir?

Q. He just said they might come out that night or in the morning?

A. Yes, sir.

Q. That is Mr. Jim Weldon, one of the Defendants in the case?

A. Yes, sir.

Q. Before you had gotten to that meeting at Mr. Parker's house you mentioned having a discussion with a brakeman, in which he said it looked like there was going to be a walkout, didn't he?

A. Yes, sir.

Q. Now the brakemen, is that the same or a different craft from the firemen?

A. Well, he is—yes, he is a trainman, see?

Q. He is a trainman?

A. Yes, sir.

Q. In other words, you are a trainman, and you are in a different craft than the firemen, aren't you?

A. Oh, yes, yes.

Q. You are in a different Union from the one Mr. Weldon is in?

A. Yes, sir.

Q. Had you heard, before you came down to Birmingham that day, about the abolishment of these hostler helpers jobs, of the outside hostler helpers job?

A. No, it was all news to me.

Q. It was all news to you?

A. It sure was.

Q. In other words, when this brakeman told you there that there might be a walkout, that's the first you heard of it?

A. That's the first I knew of it, and that was I'll say 2:30 in the evening, about 2:00 or 2:30.

Q. That is the afternoon of Sunday, is it?

A. That's right.

Q. Of October 23?

A. I didn't know nothing about it.

Mr. Pettus:

That's all.

Mr. Simpson:
That's all.

The Court:
Come down.

Mr. Simpson:
May we ask counsel and the Court if this witness may be excused?

The Court:
Unless there is objection he will be excused.

(Witness excused.)

Mr. Simpson:
Call Mr. Kennedy.

T. A. KENNEDY, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Gibson:
Q. Is this Mr. T. A. Kennedy?
A. Yes, sir.
Q. Where do you live, Mr. Kennedy?
A. 4158 51st Avenue North, Birmingham.
Q. Who do you work for, please, sir?
A. L&N Railroad.
Q. In what capacity?
A. Locomotive fireman.

Q. Were you working for the L&N Railroad Company in October, of 1955?

A. Yes, sir.

Q. Were you a fireman then too?

A. Yes, sir.

Q. Did you work generally as a fireman out of Birmingham or on some Division?

A. On what is known as the Alabama Mineral Division Seniority District.

Q. Is that the same Seniority District or list as for example Mr. Otts and Mr. Thomas, or is that a different one?

A. No, sir, that is a different Seniority District altogether.

Q. Were you at that time, in October, 1955, a member of the Brotherhood of Locomotive Firemen and Enginemen?

A. Yes, sir.

Q. Did you hold any official position with that Union?

A. Local Chairman for the Firemen's Organization.

Q. I believe you said there were two Divisions?

A. There is three, yes, sir.

Q. Three?

A. Three different Seniority Districts in Birmingham.

Q. And were you the Local Chairman over all three?

A. No, sir, just on the Alabama Mineral Division.

Q. Do you remember the occasion in October, beginning on October 23, a Sunday, in 1955, when there occurred a wildcat strike, a walkout, or some kind of work stoppage at Boyles?

A. Yes, sir.

Q. Had you heard prior to the time that the stoppage occurred that there was some probability or possibility that one would occur.

A. Yes, sir, I had.

Q. Tell the jury where and when you first heard that?

A. I came out of Anniston on Saturday morning, and while I was in Anniston, and also at Gadsden, I heard that there was a wildcat strike in progress in Birmingham at that time.

Q. Did you run from Gadsden on into Birmingham?

A. Yes, sir.

Q. Was there any strike going on at that time?

A. No, sir, there was not.

Q. When you got there?

A. There was not.

Q. What time did you arrive in Birmingham?

A. Relieved at 10:30 p. m.

Q. Saturday night?

A. Saturday night.

Q. All right, sir. Now did you attend a meeting at the home of H. K. Parker on Sunday afternoon?

A. Yes, sir.

Q. Who invited you to go there?

A. Mr. McCutcheon.

Q. Is that C. L. McCutcheon, one of the Defendants in the case?

A. Yes, sir.

Q. Had you discussed the news that you had received about the wildcat strike or whatever it was, with anyone prior to the time you went to that meeting?

A. Yes, sir, I called quite a few on Sunday.

Q. Who was the first person you called that you recall?

Mr. Pettus:
We object to conversations when the Defendants were not present.

The Court:
We can't go into conversations.

Mr. Simpson:
I haven't started into the conversation.

The Court:
I overrule the objection.

Mr. Simpson:
I asked him who he called.

A. I called Mr. Vann, Mr. Logan, and Mr. Thornton, W. M. Thornton, and Mr. Jack Gunnels, Mr. Ed Weldon, and Mr. Howard Southerland is all I recall offhand.

Q. Now had you discussed this rumor or this news that you had heard with anyone prior to the time you called those men?

A. No, sir.

Q. By telephone or otherwise?

A. No, sir.

Q. When you were there—you said you went to Mr. Parker's?

A. Yes, sir.

Q. When you went, who was with you?

A. Mr. Vann was, D. C. Vann was with me the first time I went over.

Q. Is he a fireman?

A. Yes, sir.

Q. Do you live in the general neighborhood of Mr. Parker?

A. Just across the street from Mr. Parker's house.

Q. What time of day was it on Sunday when you arrived at his place?

A. I went over first at 4:00 p.m., about, around 4:00 p. m., and Mr. Parker told me that I was mistaken in the time, that the meeting was not until 4:30

Q. Did you remain there?

A. No, sir, I went back to the house.

Q. Well, what did you do then?

A. Well, I stayed around the house until about 4:30 and went back over there.

Q. Did you see anybody over there when you got there?

A. Yes, sir, there was some several around. Mr. Vann and I the second time walked up about the same time, and Mr. Logan.

Q. Where was the meeting held?

A. I was under the impression that it was to—

Q. Excuse me, I think you misunderstood me. I said where was it held.

A. Where?

Q. Yes.

A. In the basement of Mr. Parker's house.

Q. Will you tell us who all you recall was present at the meeting besides yourself and Mr. Vann?

A. Mr. Logan, Mr. Reese Thomas, J. B. Otts, J. Mr. Brown, M. L. Hall, and Mr. Howard Southerland, Mr. Sutterlin, and Mr. Shorty Parker. And there was several others that at this time I don't recall their names.

Q. Did any of those gentlemen that you have named, or anyone else in the meeting, tell you what the meeting was about?

A. Prior to going to the meeting?

Q. No, inside of the meeting.

A. Well, they—not directly to me, it was brought up, discussion of the abolishment of the hostler helpers jobs out at the Boyles Terminal.

Q. What is the first thing that you recall that was said by any individual in the meeting?

A. I believe that someone said "Well, fellow, we have gathered here to discuss these,—the abolishment of the hostler helpers jobs."

And I spoke up at that time myself and told them that I had just talked to the General Chairman in Louisville, and he asked me to come to the meeting and tell these men that I was speaking for him, and whatever they did, not to call a wildcat strike, that the Brotherhood couldn't give them any protection whatsoever when they were on a wildcat strike.

Q. What, if anything, did anyone there in the meeting say in response to that statement?

A. Mr. Reese Thomas made the statement that J. B. knew what he was doing, if he hadn't he wouldn't have told them that.

Q. Did you know who he was talking about when hw said "J. B."?

A. Mr. J. B. Otts.

Q. What was Mr. J. B. Otts connection with the firemen at that time?

A He was the Local Chairman, representing the main line, S&NA Division.

Q. That is in Birmingham?

A. Yes, sir.

Q. Did any other person in the meeting have anything to say about this question?

A. Mr. Brown, J. M. Brown, if I recall correctly, about that point asked Mr. Otts if he had discussed it with the management of the L&N Railroad, and Mr. Otts told him he had discussed it with the master

mechanic on Thursday, I believe he said. And Mr. Brown asked him if he had discussed it with Mr. Kirchner, the Superintendent, and he said no, and he didn't intend to discuss it with anyone else.

Q. Did anyone have any suggestion about what they thought ought to be done about the taking off of these hostler helpers jobs?

A. I don't recall any specific one. Some of them said—Reese Thomas said if a man wasn't willing to walk out on a wildcat strike for his fellowman's job, he had a yellow streak up his back.

And I believe Mr. McCutcheon said along about that point that he would just rather there wouldn't anyone get in trouble over his job, that he could draw his Unemployment and live until the thing got to the Labor Board and a ruling handed down by them.

Q. Did you hear the word "strike" used in the meeting at any time except the statement that you just quoted from Mr. Reese Thomas?

A. Well, I mentioned the General Chairman said not to walk out on a wildcat strike.

Q. Now you left the meeting before it was over, did you?

A. Yes, sir.

Q. Was there anything said just prior to the time you left the meeting to you?

A. To me?

Q. Yes, sir.

A. The statement was made to me that if I was not willing to back up a wildcat strike, that I was not wanted at the meeting.

Q. Did you then remain at the meeting a while?

A. A very few minutes.

Q. Did you leave alone or did somebody go with you?

A. Two men went with me.

Q. Who were those men?

A. Mr. Logan and Mr. Vann.

Q. When you left, were you the first three to leave?

A. Yes, sir.

Q. Now, when you spoke of Mr. Paschal, the General Chairman, is that your superior officer in the Union?

A. Yes, sir, it is.

Q. Is Birmingham under the jurisdiction, the Union jurisdiction of Mr. Paschal?

A. The entire L&N System is.

Q. So that in discussing anything with him you are talking to the man you take orders from so far as Union affairs are concerned?

A. Yes, sir.

Mr. Gibson:

Take the witness.

Cross Examination.

By Mr. Pettus:

Q. Mr. Kennedy, are you a Defendant in this case?

A. No, sir.

Q. Originally were you one of the Defendants?

A. Yes, sir.

Q. Now when you were a Defendant in the case, on November 21, 1955, was your deposition taken by the Railroad Company here in this building?

A. Yes, sir.

Q. And were you under oath at the time that your deposition was taken?

A. Yes, sir.

Q. And you recall the occasion of your deposition being taken, is that correct?

A. Yes, sir, I do.

Q. Have you since reviewed your deposition of November 21, 1955?

A. Yes, sir.

Q. At that time, when your deposition was taken, at that time I was your counsel?

A. Yes, sir.

Q. Later you requested that I withdraw as your counsel?

A. Yes, sir.

Q. And I did withdraw?

A. Yes, sir.

Q. And who was the new counsel that you employed?

A. Mr. Fulford.

Q. Mr. Fulford?

A. Yes, sir.

Q. Now, back in November, of 1955, you testified in this deposition that you had heard a rumor that there was to be a walkout strike in Birmingham, didn't you?

A. I heard a rumor that there was going—that Birmingham was shut down.

Q. That it was actually in effect?

A. That was on Saturday before the strike actually happened on Sunday.

Q. And you heard that when you were at Gadsden and at Anniston?

A. Yes, sir.

Q. Do you recall several days before that time having either seen or been told about this notice on the abolition of the hostler helpers jobs?

A. Yes, sir.

Q. Was that abolition of the hostler helpers jobs widely discussed among the employees of the L&N Railroad Company?

A. Well, I don't know whether you would say "Widely discussed." I had heard it.

Q. It was discussed?

A. And it was on the bulletin board.

Q. And there was a great deal of resentment against that order abolishing those hostler helpers jobs, was there not generally among the employees?

A. Well, in some cases, yes.

Q. Well, in many cases there was a great deal of resentment?

A Well, I wouldn't know about that.

Q. Well, didn't you hear resentment expressed against it?

A. In some cases, yes, sir.

Q. When you heard the rumor up there in Gadsden and Anniston that there was a walkout in Birmingham, wasn't part of the rumor that the walkout was on account of the hostler helpers jobs?

A. At that time I didn't hear what it was about.

Q. You didn't hear what it was about?

A. No, sir.

Q. I will ask you if it wasn't your impression that that was what caused it, what the cause of it was?

A. Well, I didn't know. I had heard that they were shut down, and I knew that the bulletin was to abolish those three hostler helpers jobs.

Q. When you heard that there was a walkout up there, did you make any inquiry as to the cause of it?

A. No, sir, not up there.

Q. Did you know of any other dispute between the Company and its employees at that time other than this hostler helpers dispute?

A. No, sir.

Q. Now at this meeting that you testified about attending, the one there at Mr. Parker's house on Sunday afternoon, I will ask you if at page 17 of your deposition—could I have his deposition there—on the November deposition?

The Clerk:
November 21?

Mr. Pettus:
Yes, sir, that's right.

A. Did you say at page 17?

Q. Page 17. Now, I will read this. I am going to read from pages 17 and 18 to save time, and if there is any place that I read it that is incorrectly transcribed, or that you didn't state, just interrupt me and tell me what you did say on that occasion.

I am asking you if these questions were not asked you on that occasion, and if you didn't make these answers under oath, beginning at the middle of the page:

"Q. How long would you say in minutes, if you can put it in minutes, did you stay in the meeting, Mr. Kennedy?

"A. Oh, some 10 or 15 minutes.

"Q. And you understand you are referring to the Parker meeting?

"A. Yes, sir.

"Q. From the time you went in the garage you stayed in there 15 minutes?

"A. Something like that.

"Q. And this matter was being discussed during the whole of that time?

"A. Yes, sir.

"Q. Now you had something to say about it, didn't you?

"A. Yes, sir.

"Q. Would you mind telling us just what you said, please, sir?

"A. I said any grievance should be handled in the right way, carried through proper channels.

"Q. Did you say that this one ought to be handled that way?

"A. Yes, sir.

"Q. How come you to say that?

"A. I didn't have to.

"Q. Well, when was there any discussion about handling it any other way?

"A. No, just everybody expressed their opinion about it.

"Q. Well, how did any body else express their opinion about handling it?

"A. Well, I didn't talk to anybody else except Mr. Logan and Mr. Vann in particular. They were on my Division, and truthfully we didn't know too much about the circumstances.

"Q. Well, did Mr. Logan and Mr. Vann agree with you it ought to be handled through channels?

"A. Yes, sir.

"Q. Did anybody suggest that it was already being handled through channels?

"A. I think Mr. Otts said that he was handling it with the General Chairman.

"Q. Handling it through channels. Wasn't there some of those men that wanted to handle it by talking to the local officials in some other way?"

I misread that.

"Q. Wasn't there some of those men that wanted to handle it by talking to the local officials, or in some other way?

"A. Not while I was there, no, sir."

Now, did you testify to that? I am just asking you, just answer did you testify as I have read that?

A. At the time this deposition was taken?

Q. That's right.

A. Yes, sir.

Q. Then reading on further:

"Q. How come you to leave before the meeting was over?

"A. Well, if it was an open meeting I wasn't particularly interested in an open meeting."

Now, Mr. Kennedy what did you mean by "An open meeting"?

A. I was under the impression that it was a meeting called by the Firmen's Organization, for no one to attend other than members of the Firemen's brotherhood.

Q. And when you got to the meeting you found that there were members of other crafts that were present there, didn't you?

A. Yes, sir, some other men there that I knew wasn't members of the Firemen. Whether they were members of other crafts or not, I didn't know.

Q. All right, Mr. Kennedy. After that testimony, now if you will turn now to page 19, the next page and begin reading in the middle, the question that begins when you expressed the idea about any grievance should be handled in the regular way. Have you got that place there?

A. Yes, sir.
Q. I am reading:

"Q. When you expressed the idea about any grievances should be handled in the regular way or in the usual way, or in substance that, did anybody disagree with you?
"A. Not that I remember."

Did you testify to that on that occasion?
A. At that time, yes, sir.
Q. At that time you did, didn't you?
A. Yes, sir.
Q. Again, reading on:

"Q. Did anybody say anything about your remark?
"A. If they did, I didn't hear it.
"Q. Did anybody say you ought to get out of that meeting?
"A. I don't think so."

Now, is that what you testified on that occasion?
A. At that time, yes, sir.
Q. Now reading on:

"Q. Did anybody invite you to leave?
"A. I went out on my own.
"Q. I don't mean anybody threw you out?
"A. No, sir.
"Q. But did anybody suggest that since you felt that way about it you ought to leave?
"A. Not to my knowledge.
"Q. You heard nothing of that kind?
"A. No, sir."

Now, is that what you testified on that occasion?

A. At that time, yes, sir.
Q. At that time?
A. Yes, sir.
Q. Now, reading at the bottom of page 20 there:

"Q. Did you hear any discussion about that thing was getting out of hand in there?
"A. No, sir, I did not.
"Q. You didn't hear anybody say that?
"A. No, sir.
"Q. Did anybody besides you in that meeting advocate handling it through channels?
"A. I believe Mr. Otts said he was handling it through channels."
Did you testify to that on that occasion?
A. Yes, sir.
Q. Now, reading on page 22, in the middle of page 22,—and all of this testimony is about this Parker meeting, you understand?
A. Yes, sir.
Q. Is that your recollection about it?
A. Yes, sir.

"Q. Is that what brought up your statement, it ought to be handled through regular channels?
"A. We just some of us discussed it, and somebody asked me what I thought about it, how I thought stuff ought to be handled, and I was trying to tell them how to do it.
"Q. What other facts were being talked about?
"A. Wasn't any that I knew of.
"Q. Everybody there knew the way to handle it was through channels, and knew it was handled through channels, is that what Mr. Otts told you?
"A. Some folks were not exactly familiar with channels.

"Q. You didn't tell them that, just how it was to be handled through channels; you told them it ought to be handled through channels?

"A. Yes, sir.

"Q. You mean to tell me there wasn't any discussion out of anybody's mouth that you heard at that meeting that there wasn't any other way to handle this matter other than through channels?

"A. No, that's right."

Did you testify to that, Mr. Kennedy?

A. At that time, yes, sir.

Q. Now, Mr. Kennedy, after that meeting, did you lay off?

A. Yes, sir.

Q. What time did you lay off?

A. I don't know the exact time. I would say, oh, in the neighborhood of 5:00 or 6:00 o'clock, or maybe a little later. I don't recall the time.

Q. Now, in this November deposition what was the reason you said you laid off?

A. In this one?

Q. Yes

A. At that time I said I had some concrete to pour.

Q. Well, was that true?

A. Not altogether.

Q. What is the reason then that you laid off?

A. I laid off because I didn't want to get called to work in case the strike did happen.

Q. Turn to page 30, at the bottom, the last question there, Mr. Kennedy:

"Q. Mr. Kennedy, you didn't have a suspicion when you called in at 6:00 o'clock and talked to Mr. Jordan that there was going to be a strike that night, did you?

"A. No, sir.
"Q. Huh?
"A. No, sir.
"Q. You hadn't heard enough when you left that meeting over there that you knew those fellows were planning to call a walkout, did you?
"A. No, sir, I didn't."

Did you testify to that?

A. At that time, yes, sir.
Q. You testified under oath?
A. Yes, sir.
Q. What are the hostler helpers jobs, Mr. Kennedy? Before this abolition what did the hostler helper do at Boyles?
A. A hostler moves engines on the track within the roundhouse, and outside on the main line. The hostler helpers job is to throw the switches and help the hostler with that engine, and lookout for the left side of it.
Q. And lookout for the left side?
A. Yes, sir.
Q. That is the hostler helpers job?
A. Yes, sir.
Q. Now, the hostler, does he perform duties similar to what generally the engineer performs on a main line?
A. He handles the engine, yes, sir.
Q. And they call him a hostler because he just handles the engines on short runs, and locally in the Yards, is that right?
A. He handles the engine with no cars attached to it.
Q. With no cars attached to it?

A. Yes, sir.

Q. The engineer then handles the engine when there are cars attached to it, is that right?

A. Yes, sir, that's right.

Q. And the hostler is a man that helps the hostler?

A. That's right.

Q. And in general the hostler's job corresponds in handling the engine to an engineer's job. And does a hostler helpers job correspond to a fireman's job?

A. Yes, sir, you could term it in that term.

Q. In general they have some of the main similar duties, is that correct?

A. Yes, sir.

Q. Now, when a hostler helper—these jobs here were the outside hostler helpers positions that were abolished under this notice, were they not?

A. I believe that is correct, yes, sir.

Q. When an engine was to be taken say out of the roundhouse on the run into say the Passenger Station at Birmingham, or some other local spot, will you just state what the hostler helper did to help the hostler?

A. Well, he would carry the engine from the roundhouse to the passenger shed, or I mean throw the switches.

Q. I mean when he first got aboard, what were the duties of the hostler helper when he first got aboard the engine, when he first reported for duty?

A. Well, you are asking me something, Mr. Pettus, that I have never worked as a hostler.

Q. You never have worked as a hostler?

A. Therefore I couldn't answer all of your questions, due to the fact that I have not worked as a hostler.

Q. You have worked as an engineer?
A. Yes, sir.
Q. You never have worked as a hostler?
A. No, sir.
Q. And you testify that you don't know actually what the hostler helpers duties are?
A. Not altogether, no, sir, I do not.
Q. Do you know what some of them are?
A. Well, more or less, what I have heard.
Q. What you have heard?
A. Yes, sir.
Q. You never have been present when a hostler helper reports for duty and does the work?
A. No, sir, I haven't.
Q. Was there much in the papers and on the radio when this walkout occurred here in Birmingham?
A. Well, there was, it was in the newspapers, yes, sir.
Q. You say it was in the newspapers?
A. Yes, sir.
Q. And from the time that you reported out Sunday night, when did you go back to work?
A. I don't recall whether it was on Thursday or Friday of the following week.
Q. You don't know whether you went back to work Thursday or Friday?
A. No, sir, I don't. It could have been later than that.
Q. Where were you during the time that the walkout was on, Mr. Kennedy?
A. I beg your pardon?
Q. Where were you?
A. During the entire walkout or wildcat?
Q. Yes.
A. Well, I was around home.

Q. You stayed home all the time?

A. Yes. I come to town a time or two.

Q. Mr. Kennedy, what was the statement that you said that Mr. Reese Thomas made at that meeting?

A. Which one?

Q. Give me every statement he made then.

A. One statement that he made, he said "J. B. knew what he was doing or he wouldn't have told us to do that."

Q. Well, now, you have never made that statement in any previous deposition that you have given in this case, have you?

A. I don't recall.

Q. In that language, you have never said that before? You have testified twice in this case and you have never made that statement, have you?

A. I don't recall whether I have or not.

Q. I mean in that language. And what was the other statement that you said Mr. Thomas made?

A. He said that any man that wasn't willing to fight for his fellowman's job had a yellow streak up his back.

Q. And in your deposition of November, 1955, which was about one month after October 23, you testified that no statement like that had ever been made at that meeting, didn't you at that time in that deposition you testified that no other statement like that was made?

Mr. Gibson:

We object to that as a conclusion of the witness.

The Court:

I sustain the objection as repetition. He has read the deposition.

Mr. Simpson:
He has read exactly what he said.

Q. Well, you didn't testify that that statement was made in that deposition, did you?
A. No, sir.
Q. And Mr. Kennedy your testimony here has been changed from the testimony you gave on the deposition in November, 1955, hasn't it?

Mr. Simpson:
We object to that.

The Court:
I sustain the objection. That is for the jury to judge, whether or not he has changed it.

Q. I will ask you if at the time that you gave your deposition on November 21, 1955 if you didn't testify in your deposition of May 11, 1956 that an incident had occurred during the time that your November deposition was being given that persuaded you or compelled you to testify the way you did in November?
A. I didn't—Mr. Pettus, I did't get quite all your question. Will you repeat it, please, sir?
Q. Maybe I can shorten it. I want you to just understand it. In your May, 1956 deposition didn't you testify that an incident had occurred while you were giving your November, 1955 deposition or shortly before that?
A. Yes, sir.
Q. You testified to that?
A. Yes, sir.
Q. Tell us what that incident was.

A. A few days before I went on the witness stand in November for the deposition I was going to work, and it was in the afternoon, late in the afternoon. And I parked my car right across the street from Rex's Barbecue, which is—the highway runs between the washroom and Rex's Barbecue. And as I got out of my car, locking it, there was an automobile drove up, coming from the opposite direction I was in and stopped right at the back of my automobile, and the man rolled the window down in the back seat and stuck an object out of it that appeared to me to be a shotgun and told me if I said anything on deposition that got anybody in trouble I was a dead son-of-a-bitch.

Q. When that incident occurred, did you report it?

A. No, sir.

Q. Did you work that night?

A. Yes, sir.

Q. Did you report it to any officials of the Railroad or any fellow employee that night?

A. No, sir, I did not.

Q. Did you call the Birmingham Police or the Sheriff's Office or the United States Marshal and report it that night?

A. No, sir, I didn't.

Q. Did you report it to me?

A. No, sir.

Q. I was your attorney at that time?

A. Yes, sir.

Q. You never mentioned that incident to me, did you?

A. No, sir, I didn't.

Q. Did you mention that incident to anyone for several months?

A. Not for quite some little bit.

Q. It was many months later before you mentioned that incident to anybody, wasn't it?

A. Well, I don't know whether you would say many months. It was a right smart little while. I don't recall exactly how long.

Q. It was well into the spring of 1956, wasn't it, shortly before you gave this deposition in May?

A. I believe—I am not sure just how long it was, Mr. Pettus. It was a right smart little while.

Q. A little while, and you just kept that to yourself and didn't tell anybody about it?

A. Yes, sir.

Q. Now, after your deposition was taken in May, of 1956, the Railroad dropped you as a Defendant, didn't they, in the case?

A. After the May deposition?

Q. After your second testimony in the case?

A. Yes, sir.

Q. Now did you have any agreement with the Railroad or did your attorney have any agreement with the Railroad that you know of that you would be dropped as a Defendant at any time?

A. No, sir, not to my knowledge.

Q. And it was news to you that the Railroad dropped you as a Defendant?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Mr. Pettus:

That's all.

Re-Direct Examination.

By Mr. Gibson:

Q. Mr. Kennedy, on that occasion you told these gentlemen about when the automobile drove up and the statement was made by someone in it that you have quoted, what sort of automobile was it?

A. It was a black Oldsmobile.

Q. Did you get the license number?

A. It didn't have a license plate on the rear.

Q. Was there one man in it or more than one?

A. Five men in it.

Q. You are a married man, aren't you, Mr. Kennedy?

A. Yes, sir.

Q. Have a family?

A. Yes, sir, I do.

Q. In the Union Organization or setup which they had in October, of 1955, which Union was directly concerned by whatever happened to the hostler helpers jobs?

A. The Brotherhood of Locomotive Firemen and Enginemen.

Q. So far as you know was there any other Union which had jurisdiction over that particular thing?

A. No, sir.

Q You told Mr. Pettus on cross examination that you laid off because you didn't want to be called to work. Why didn't you want to be called to work?

Mr. Pettus:

Now, we object to that. It calls for a mental operation of the witness.

The Court:
I sustain the objection.

Q. In connection with your expressed desire not to be called to work if the strike took place, did you have any fear of personal injury or violence?

Mr. Pettus:
We object to that. It calls for a mental operation, incompetent, irrelevant, and immaterial.

The Court:
I sustain the objection for the time being.

Mr. Simpson:
We except.

Q. If I understood your testimony correctly, the incident with the object which looked like a shotgun, and the threat that if you told anything on your deposition that hurt anybody you would be a dead son-of-a-bitch, that took place before you gave your first deposition that Mr. Pettus has been asking you about?

A. Yes, sir, it did.

Q. About how many days before, if you remember?

A. Oh, some two or three, maybe four days before. I don't remember exactly.

Q. Had you already received a subpoena to come to Court and give your testimony by deposition at that time?

A. Yes, sir, I had.

Q. You had received a subpoena from the Clerk of the United States Court to come in and give your deposition?

A. I believe I had got the—you mean the one that—
Q. The notice.
A. The notice?
Q. Of the first taking of the deposition?
A. I am not positive whether I had got that one or not.
Q. You knew you were coming in to testify as a witness on your deposition in the United States Court at the time this Oldsmobile—
A. Yes, sir.
Q. —incident took place?
A. Yes, sir.

Mr. Gibson:
That's all.

Re-Cross Examination.

By Mr. Pettus:
Q. I don't believe I asked you, you didn't know any of the men in the automobile?
A. No, sir, I did not.

Mr. Pettus:
All right, that's all.

Re-Direct Examination.

By Mr. Gibson:
Q. Was there anything to prevent you from seeing the faces of these men in the automobile?
A. Yes, sir, the one that was talking to me appeared to have a handkerchief or something to that effect over his face.
Q. Did you recognize his voice?

A. No, I didn't.
Q. Had you ever heard it?
A. No, I hadn't.

Mr. Gibson:
That's all.

(Witness excused.)

Mr. Simpson:
Call Mr. Vann, please.

D. C. VANN, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:
Q. Mr. Vann, will you state your initials to the jury, please, sir, your name?
A. D. C. Vann.
Q. Where do you live?
A. 1816 McCaskill Street, Tarrant.
Q. Jefferson County?
A. Jefferson County.
Q. How long have you lived here?
A. All my life.
Q. Who do you work for?
A. L&N Railroad.
Q. How long have you worked for the L&N Railroad?
A. 10 years.
Q. What do you do for it?
A. Fireman.

Q. Do you belong to a Union?

A Yes, sir.

Q. What Union do you belong to?

A. BofLF&E.

Q. Brotherhood of Locomotive, Firemen and Enginemen?

A. Yes, sir.

Q. That is the same Union that the hostlers and hostler helpers belong to, is it not?

A. Yes, sir.

Q. Now, do you recall last fall being present at a meeting at Mr. Parker's home?

A. Yes, sir.

Q. H. K. Parker?

A. Yes, sir.

Q. Now, I am not going into all the preliminaries about where you had been, and how you happened to get there. Do you recall who suggested that you go to that meeting?

A. Yes, sir.

Q. Who?

A. Mr. Kennedy.

Q. Who?

A. Mr. Kennedy.

Q. Mr. Kennedy?

A. Yes, sir.

Q. The gentleman who just left the stand here?

A. Yes, sir.

Q. Called you and asked you to come to the meeting?

A. Yes, sir.

Q. All right, sir. When you got to the meeting at Mr. Parker's house, did you know Mr. Parker?

A. Yes, sir.

Q. Can you tell us the people that you recall now who were there that afternoon? This is what date? Give us the date if you can.

A. Sunday afternoon.

Q. What date?

A. I don't remember the date.

Q. It was on Sunday afternoon?

A. Yes, sir.

Q. About what time of day?

A. Well, I don't remember that because I was early and I left and came back.

Q. All right.

A. About 2:30 I would guess, or 3:00 o'clock.

Q. In the afternoon?

A. Yes, sir.

Q. Had you worked that day?

A. No, sir.

Q. And was that the day on which the strike began?

A. Yes, sir.

Q. In other words, it was the afternoon before the strike began that night?

A. Yes, sir.

Q. That sufficiently identifies it.

Mr. Pettus:

We object to that term, "the strike." Work stoppage is what occurred.

The Court:

I sustain the objection.

Mr. Simpson:

The Union members refer to it as a "wildcat strike."

The Court:
It has been referred to that way, I guess.

Mr. Simpson:
That is their terminology for it, not mine.

Q. Now, Mr. Vann, tell us the people you saw there that afternoon that you recall and knew at that time?
A. Mr. Kennedy, Logan, myself, Parker, Mr. Otts, Mr. Letchman.

The Court:
Mr. Letchman?

The Witness:
Letchman, Mr. Thomas.

Q. Reese Thomas?
A. Yes, sir, Mr. Baum.
Q. How do you spell that Baum?
A. B-a-u-m-, I presume.
Q. Speak up clearly so everyone can understand you. Mr. Baum.
A. All right. Mr. Brown.
Q. Which Mr. Brown?
A. J. M. Brown, Jr.
Q. All right.
A. A man I knew as Mack, a man I knew as Red, but I don't know their names.

The Court:
Do you see either one of those men in the Courtroom?

The Witness:
I beg your pardon?

The Court:
Do you see either Red or Mack in the Courtroom?

The Witness:
Yes, sir, I see Mack.

Q. Is that Mr. McCutcheon?
A. Yes, sir. I—and I saw Mr. Anderson, Mr. Sutterlin and Mr. Southerland, a Mr. Southerland.
Q. Mr. Sutterlin and Mr. Southerland?
A. I believe that's right, yes, sir.
Q. All right.
A. That's about all I can remember right offhand.
Q. Are those gentlemen that you called off certain names of here, are they the gentlemen sitting around here, the Defendants in this Courtroom now?
A. Yes, sir.
Q. All right. Who had charge of the meetings, or took charge of the meeting?
A. There wasn't a regular meeting. Mister—we just all gathered there.
Q. Yes.
A. I guess.
Q. It wasn't a Firemen's official meeting?
A. No, sir, it wasn't.
Q. Did you hear anybody say anything towards the opening of the meeting about what the purpose of the meeting was?
A. Well, someone said let's get down to business, and Mr. Otts said, they got to talking, and he said he couldn't tell anyone to strike, he said it wasn't up to him, he said he couldn't tell them what to do, it would be up to them.

Q. Up to whom?

A. The men.

Q. The men that were there?

A. Yes, sir.

Q. All right. Did you hear anybody else make a statement to the meeting?

A. Well, I heard Mack, Mr. McCutcheon, say that he didn't want to see anyone have any trouble over his job, he wanted it handled the right way. And Mr. Brown said that he would like to see it handled, I believe he said he would like to see it handled with the local officials if I can remember correctly.

Q. Did you hear anybody else make a statement to the meeting?

A. Well, that's about all. A lot of them were talking at the same time.

Q. Well, I don't mean to be refreshing your recollection, but who had you gone to that meeting with?

A. Mr. Kennedy.

Q. Well, did he make a statement to the meeting?

A. Yes, sir, he did.

Q. Tell the jury what he said.

A. He told them that he had had instructions from Mr. Paschal, Jake Paschal that he couldn't, they couldn't have a legal strike, that he couldn't tell them to strike. By that I mean that the Union couldn't support them if there was a strike.

Q. That the Union couldn't support them?

A. Yes, sir.

Q. If there was a strike?

A. Yes, sir.

Q. What sort of strike did they call it that they were planning or talking about?

A. Well, it was just—a strike, wildcat strike I guess.

Q. All right.

Mr. Pettus:

We move to exclude that as what he guesses, unless he heard that.

Q. Was that language used there at the meeting?

A. I don't remember.

Q. As between a legal strike and a wildcat strike?

A. I don't remember whether that was definitely used or not.

The Court:

I will exclude his answer. Anything depending on a guess, gentlemen, that is excluded from your consideration.

Q. In your best judgment from your knowledge of Union affairs would that have been a wildcat strike?

A. Yes, sir, it would have.

Q. All right. Now then what was the final result of the discussion? What decision did they reach?

A. Well, we left after that, three of us did.

Q. Who were the three?

A. Kennedy, Logan and myself.

Q. Mr. Kennedy, the man that just left the stand?

A. Yes, sir.

Q. Mr. Logan and you?

A. Yes, sir.

Q. You all left?

A. Yes, sir.

Q. Before you left did you hear any statement, was there anything said about volunteers for picketing?

A. Yes, sir.

Q. Now just tell the jury what was said about that before you left.

A. Well, they were trying to find out who would do picket duty, and who would not. And when they

found out, they said all others that wouldn't, they wasn't wanted or wasn't needed.

Q. Now, had you volunteered to do picket duty?

A. No, sir.

Q Had Mr. Logan volunteered to do picket duty?

A. No, sir.

Q. Had Mr. Kennedy volunteered to do picket duty?

A. No, sir.

Q. Now then you say you three left?

A. Yes, sir.

Q. That was after the statement you say that those who would not do picket duty were not wanted at the meeting?

A. I don't remember whether it was exactly those words, but it was right in there.

Q. Is that the substance?

A. Yes, sir.

Q. Of what was said?

A. Yes, sir.

Q. All right, when you left the meeting, or before you left, was there anything said there at the meeting about whether or not they could have regular picket lines, with signs being carried?

A. I don't remember it if there was.

Q. You don't remember anything about that?

A. No, sir.

Q. Now, what did you do when you left the meeting?

A. I went home and reported off.

Q. When were you due to go out again on your run?

A. The next morning, or the next night, Monday night.

Q. Monday night?

A. Yes, sir.

Q. At what time?
A. 7:30, on duty I believe it is; 8:00 o'clock.
Q. 8:00 o'clock?
A. Yes, sir.
Q. So when you left that meeting, after what you had heard there, you did what now?
A. Reported off.
Q. Tell the jury what you mean by reported off.
A. All right.
Q. Some of them may not understand railroad terminology.
A. It is an off board where you report off if you are sick, off on business, or something like that.
Q. You call in?

A Juror:
In other words, you laid off?

The Witness:
Yes, sir, I laid off.

Q. You called in to the headquarters?
A. Yes, sir.
Q. To the engine dispatcher's office out there, did you?
A. Yes, sir.
Q. Who was that on duty that afternoon?
A. I believe that was Mr. Jordan.
Q. What did you tell him you wanted to lay off for?
A. I said I was sick.
Q. You told him you were sick?
A. Yes, sir.
Q. Were you sick or not?
A. Not physically, no, sir.

Q. Not physically?
A. No, sir.
Q. Well, were you sick some other way?
A. A little bit.
Q. In what way? Did you not want to go to work?
A. I just didn't want to have any part in it.
Q. I see. And that was after you left the meeting?
A. Yes, sir.
Q. And you knew what had been done there?
A. Yes, sir.
Q. Now did anybody during the course of that time ask you to do any picketing duty personally?
A. During the meeting?
Q. No, I don't mean that. I mean during the course of the strike.
A. Yes, sir.
Q. Who did it?
A. Mr. Breedlove.
Q. Where were you when he asked you that?
A. I was at home.
Q. How did he ask you?
A. Over the phone.
Q. Did you recognize his voice as being Mr. Breedlove or did he tell you it was him?
A. Well he told me it was him, and that's the only thing I knowed.

Mr. Pettus:
We move to exclude that.

Q. Do you know Mr. Breedlove?

Mr. Pettus:
If he didn't recognize the voice, not identified as his voice.

Q. Do you know Mr. Breedlove?
A. When I see him, yes, sir.
Q. Now the man that called you, tell the jury whether or not—

Mr. Pettus:
We would like a ruling on that.

The Court:
Well, did you recognize his voice?

The Witness:
A man called me and said it was Mr. Breedlove, and that's all I know.

The Court:
I sustain the objection.

Q. Anyway, you didn't do any picket duty?
A. No, sir.
Q. You did not?
A. No, sir.

Mr. Simpson:
All right, you can have the witness.

Cross Examination.

By Mr. Pettus:
Q. Now, Mr. Vann, you didn't do any work during the walkout, did you?
A. No, sir.
Q. Did you go near any part of the railroad property during the strike?
A. No, sir.

Q. You didn't go down there?
A. No, sir.
Q. You just stayed away from it?
A. Yes, sir.
Q. Had you heard about the abolition of the hostler helpers jobs prior to this meeting?
A. When Mr. Kennedy called me.
Q. Is that the first you had heard of it?
A. Yes, sir.
Q. You went to the meeting right after you heard about it, is that right?
A. Yes, sir.
Q. Do you know Mr. Red Pennington?
A. No, sir.

Mr. Pettus:
Will you stand up Mr. Pennington?

Q. Was this gentleman here at the meeting?
A. I didn't see him if he was.
Q. You didn't see him at the meeting?
A. No, sir.

Mr. Pettus:
You can sit down.

Q. The man that you mentioned by the name of Red is some other Red, isn't it?
A. Yes, sir.
Q. You don't mean Mr. Pennington is the man that you saw?
A. No, sir.
Q. And you didn't see Mr. Pennington at the meeting?
A. No, sir.

Q. Now when you called in and laid off after this meeting, did you come to that decision yourself?

A. Yes, sir.

Q. Will you describe the place where this meeting occurred?

A. It was in a basement.

Q. A basement?

A. Yes, sir.

Q. And how many men were there?

A. I couldn't tell you.

Q. You don't know how many men were there?

A. No, sir.

Q. Was it dark in there?

A. No, sir, it wasn't dark.

Q. It was light, was it?

A. Yes, sir.

Q. There wasn't any reason you couldn't see them, was there?

A. No, sir.

Q. In the meeting?

A. No, sir.

Q. Were they standing around in little groups, one place and another?

A. Yes, sir.

Q. There was just sort of a general hubbub and general commotion in the meeting, is that right?

A. Yes, sir.

Q. And after the meeting was over you just called in yourself and laid off?

A. I didn't stay until the meeting was over.

Q. You didn't stay until the meeting was over?

A. No, sir.

Q. The meeting was still in progress when you left?

A. Yes, sir.

Q. How many men left at the same time you did?

A. The two men that I know of that I mentioned. I don't know—

Q. Kennedy?

A. Yes, sir.

Q. And Logan?

A. Yes, sir.

Q. And yourself?

A. Yes, sir.

Q. You didn't see anybody else leave?

A. No, sir.

Q. How long had you been at the meeting when you left?

A. I would imagine 20 or 30 minutes.

Q. You imagine that you had been there 20 or 30 minutes?

A. I imagine.

Q. When you left?

A. I didn't keep time.

Q. Could you be mistaken about that?

A. Yes, sir.

Q. You could have just been there about 10 minutes?

A. I could have, yes, sir.

Q. But whenever you left, you left at the same time Kennedy left?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. And when did you go back to work?

A. I don't remember, sir, whether it was the Thursday night following that or not, I would have to check.

Q. But you did go back to work?

A. Yes, sir.

Q. Did you read in the newspapers that the strike was over, or the walkout was over?

A. Yes, sir.

Q. The newspapers called it a strike, didn't they?

A. I don't remember now exactly what they called it.

Q. In other words, when you read that it was over you went on back to work?

A. Yes, sir.

Q. From the time you laid off until you went back to work did you make any calls down to the plant there?

A. No, sir.

Q. Or down to the Yard?

A. No, sir.

Q. To report back to work?

A. No, sir.

Q. Did you have to call in to be reassigned to your job, or were they supposed to call you?

A. I had to call in and report back for work.

Q. You had to call in and report back for work?

A. Yes, sir.

Q. Do you recall the day you did that?

A. No, sir, I don't.

Q. Had you made any attempt to call from Sunday on through Thursday?

A. No, sir.

Q. You waited, did you, until you heard that it was over before you called back, is that right?

A. Yes, sir.

Q. You got the word through the newspapers, is that right?

A. It may have been through the newspapers, or I might have been told.

Q. You may have been told?

A. Yes, sir.

Q. You don't remember now how you knew it?

A. No, sir.

Q. But when you did report back you were able to get somebody on the line and they were operating, is that right?

A. Yes, sir.

Mr. Pettus:
That's all.

The Court:
Are you through with this witness?

Mr. Simpson:
May I have half a minute, Your Honor?

The Court:
Yes.

Re-Direct Examination.

By Mr. Simpson:

Q. Mr. Vann, do you know how many other people were at that meeting that called up the call boy out there and laid off?

A. No, sir.

Q. With Mr. Jordan as sick right after that meeting?

Mr. Pettus:
We object to that.

Q. Do you know of your own knowledge is all I am asking you?

A. I don't know who laid off sick, no, sir, I couldn't tell you whether they laid off sick or not.

Q. You didn't fail to work and lay off because you were mad at the Railroad or wanted to strike in any way, did you?

A. No, sir.

Q. It was some other reason besides that that made you lay off?

A. Yes, sir.

Q. All right. That's all—you were not sick?

A. No, sir.

Mr. Pettus:

Well, you laid off because you didn't want to work, didn't you?

The Witness:

Yes, sir.

Mr. Simpson:

Why didn't you want to work?

Mr. Pettus:

We object to that.

Mr. Simpson:

Ho, ho. You had been around there several years, hadn't you?

The Witness:

Yes, sir.

Mr. Simpson:

10 years I believe you told us?

The Witness:
Yes, sir.

Mr. Simpson:
All right, you can come down.

The Court:
We will take a recess for about 15 minutes at this time.

(Witness excused.)

(A short recess was had.)

The Court:
Call your next witness.

Mr. Simpson:
Call Mr. Smith.

A. J. SMITH, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:
Q. Will you tell the jury your name, please, sir?
A. A. J. Smith.
Q. Where do you live, Mr. Smith?
A. Hartselle.
Q. Where do you work?
A. Decatur Freight Office.
Q. Of what Company?
A. L&N.

Q. How long have you been working for the L&N?

A. I have 42 years of service.

Q. What is your job up there?

A. Cashier.

Q. How long have you been cashier up at the Decatur Freight Office?

A. A couple of years.

Q. What are your duties as cashier?

A. To enter all cash items and collect freight, collect the money and deposit it.

Q. Where is your office, your desk, where is your place of business there?

A. The front of the building, the first desk.

Q. Front office, downtown there in Decatur?

A. Yes, sir.

Q. Now, Mr. Smith, do you recall some strikes last year here on the L&N Railroad?

A. Yes, sir.

Mr. Pettus:

We object to the "strikes", may it please the Court. That has to be limited to this October occasion.

Mr. Simpson:

I am going to get around to this particular one.

The Court:

Overruled.

Mr. Pettus:

We except.

Q. What time do you recall the strikes were?

Mr. Pettus:
We renew our objection to any strike, plural, strikes.

Mr. Simpson:
I am trying to keep from leading the witness.

The Court:
We are concerned about only one occasion.

Mr. Simpson:
That's right, yes, sir.

The Court:
Ask him if he recalls one in October, I believe it was.

Q. Do you remember a strike in October, of last year?
A. Yes, sir.
Q. Do you remember the day it began?
A. Well, the particular day I know was the 24th of October.
Q. That is the day you knew about it?
A. Yes, sir.
Q. You don't know when it began?
A. No, sir.
Q. What day of the week was the 24th of October?
A. Monday.
Q. On Monday?
A. Yes, sir.
Q. You don't know whether it began down here at 9:00 o'clock Sunday night before that or not, do you?
A. No, sir.

Q. All right. Now are you a member of any of the Railroad Brotherhoods?

A. Not now, no.

Q. Not now?

A. No, sir.

Q. Were you on duty on Monday the 24th of October?

A. Yes, sir.

Q. Did anything unusual occur? I don't want to lead you and tell you what I am trying to get, but did anything unusual occur on that Monday?

A. Yes, sir, there was three or four men came in to the office. I was there. It was about 4:20 in the afternoon.

Q. Had you heard prior to that time that they were coming up there from Birmingham?

A. I had not, no, sir.

Q. You had not heard that?

A. No, sir.

Q. All right. They came in the freight office?

A. Yes, sir.

Q. Three or four of them?

A. Something like that.

Q. Now, how far is your desk from the door where they walked in the front, into that freight office there?

A. I judge 6 or 7 feet.

Q. All right. Where did they come when they came in there?

A. I believe they came in from the side door, through the freight house.

Q. Through the freight house?

A. Yes, sir.

Q. Would that put them behind the counter or the desk where you were or in front of you?

A. It put them in front of me.
Q. What did they say and do when they came in?
A. They wanted to know who was in charge.

Mr. Simpson:
Would Mr. Pennington, Mr. Red Pennington mind standing up, please?

Q. Do you recognize Mr. Red Pennington there?
A. I believe so.
Q. Was he one of those gentlemen?
A. I believe so, yes, sir.
Q. Now when they came in what was said and done?
A. They asked me who was in charge, and I told them J. J. Hardwick, but he wasn't in. I told them the chief clerk was in, he was back in the office, to my back.
Q. All right, that was Mister who?
A. Sir?
Q. Who was the chief clerk?
A. Mr. Petty.
Q. Mr. Petty?
A. R. H. Petty.
Q. All right, what did they do then when you told them that?
A. They said they were on strike and wanted us to come out with them.
Q. Had anybody mentioned strike up to that time to you?
A. Not to me, no, sir.
Q. Were you mad at the Railroad or wanting to quit in any way?
A. No, sir.

Q. What were you doing at the time they walked in?

A. I was making my deposit, or writing up my deposit.

Q. That consisted of checks and money?

A. Checks and money, yes, sir.

Q. Do you remember the total of how much you had?

A. Yes, sir.

Q. Was it out there on your desk?

A. Yes, sir.

Q. About how much did you have there?

A. $10,530.54.

Q. Have you looked that up for me on your records to see the exact amount?

A. I never will forget it.

Q. All right. Now when they came in and said that to you, what did you say?

A. Sir?

Q. After you told them to see Mr. Petty did they come back to you?

A. I told them I would come out as soon as I got through with my deposits, and putting my money and freight bills in the safe.

Q. All right. What did they say to the other people?

A. They said "Come on out."

Q. Who said that?

A. One of the men that was in front of me.

Q. One of the three men there?

A. Yes, sir.

Q. Do you know the names of the other two that were with Mr. Pennington?

A. No, sir, I don't.

Q. Was Mr. Pennington doing part of the talking?

A. Yes, sir.

Q. What did he say?

A. He told this man, says "Let him stay in here and let him make up his deposits and put his billings up, and then he will come out."

Q. All right. Did you promise them you would?

A. Yes, sir, I told them I would.

Q. Now then you had not intended, I believe you say you had not intended quitting work?

A. No, sir.

Q. Or coming out in any way?

Mr. Pettus:

We object to that, may it please the Court. I hadn't heard him say that.

The Court:

I sustain the objection.

Mr. Pettus:

We move to exclude it.

Q. Why were you coming out?

Mr. Pettus:

We object to that, incompetent, irrelevant and immaterial, a mental operation.

The Court:

As to why, yes, I sustain the objection.

Q. Were you scared?

Mr. Pettus:
We object to that, incompetent, irrelevant and immaterial.

The Court:
I overrule the objection.

Mr. Pettus:
We except.

A. Do you want me to answer?
Q. Yes, sir.
A. Why—ask the question again.
Q. Well, after these men had told you to come on out—well, how many times did they tell you to come out?
A. Three times.
Q. Three times?
A. Yes, sir.
Q. All right now let's come down to the time they told you to come out. What happened on that particular occasion?
A. Well there was, I believe two of the men, or more, I wouldn't swear if there was any more than two or not, told me "Come on out of here."
Q. "Come on out of here"?
A. And I says "I'm coming now as soon as I put this in the safe", and I was fixing to put it in the safe then.
Q. All right. Where was that man when he said that to you?
A. Right in my face.
Q. Right in your face?
A. Yes, sir.
Q. Did you look at him?

A. Yes, sir.
Q. Tell the jury his appearance.
A. He looked dangerous.
Q. What was the color of his face?
A. Red-faced.
Q. Red, flushed?
A. Yes, like he was angry.
Q. Angry?
A. Like he meant business.
Q. Like he meant business?
A. Yes, sir.
Q. All right. Now then when you got your money locked up did you come out?
A. I came right on out the front door.
Q. I will ask you, were you scared at that time?

Mr. Pettus:
We object to that.

The Court:
Overruled.

Mr. Pettus:
We except. Incompetent, irrelevant, and immaterial, mental operation.

Q. The Court says you can answer that.
A. Yes, sir.

Mr. Pettus:
We move to exclude the answer on the same grounds.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Did you then get up and get out?
A. Yes, sir.
Q. Now after you got on the outside, did Mr. Pennington say anything to you?
A. He asked me was I coming back tomorrow.
Q. Mr. Pennington asked you if you were coming back to work tomorrow?
A. Yes, sir.
Q. What did you tell him?
A. I told him I didn't know.
Q. What did he say then?
A. He said "Well, if I come back up here and find you here, I'll whip you all over this place."

Mr. Simpson:
All right, you can have the witness.

Cross Examination.

By Mr. Pettus:
Q. Now, Mr. Smith, you say there were three or four men?
A. That is my best memory, yes.
Q. You don't know whether there were three or four?
A. Three or four.
Q. Three or four?
A. Yes, sir.
Q. You are not positive?
A. No, sir.
Q. Whether there were three or four?
A. No, sir.

Q. Now, Mr. Smith, Mr. Simpson had Mr. Pennington stand up. Who were the other two men? Can you point them out here in the Courtroom?

A. No, I couldn't. They had their work clothes on. I couldn't.

Q. Stand up and look around out at them and see if you can tell the other two men?

A. No, sir.

Q. If you see the other two men I want you to name them.

A. I couldn't name them if I knew them, I couldn't identify them.

Q. In your best judgment are the other two men in the Courtroom? Just take your time and look at everybody in here, up here at the counsel table and everywhere else in the room.

A. Well, I wouldn't say. They had their work clothes on.

Q. Would you have recognized Mr. Pennington if he had not been pointed out to you the way he was?

A. Yes, sir.

Q. You knew him?

A. Yes, sir.

Q. Did you know him before?

A. No, sir.

Q. You didn't know him before?

A. I have seen him since.

Q. But you knew him on that occasion?

A. Yes, sir.

Q. None of these men were armed, were they?

A. How is that?

Q. None of these men were armed, were they.

A. I didn't see any.

Q. Not anything; they were just there?

A. Yes, sir.

Q. Was he dressed in work clothes?

A. Yes, sir.

Q. He was dressed in work clothes at that time?

A. I believe so.

Q. He was?

A. I believe they were.

Q. You believe all of them were dressed in work clothes?

A. Yes, sir, I wouldn't say that they had on their best or anything like that.

Q. I mean, you have been with the Railroad 43 years?

A. Yes, sir.

Q. Well, you know when railroad men have on work clothes, transportation men, and when they don't, don't you?

A. That's right.

Q. Well, did these men that you saw there then have on—

A. Had on overalls.

Q. Had on overalls?

A. Work clothes, yes, sir. I consider them work clothes.

Q. And this was on Monday, October 24?

A. Yes, sir.

Q. Are you sure that the conversation you had wasn't with one of the other men?

A. Yes, sir.

Q. One of the other three men?

A. He was talking direct to me.

Q. Talking direct to you?

A. Yes, sir.

Q. But the man that you say was red-faced, the man that you say was red-faced, that was not Mr. Pennington, was he?

A. No, sir.

Q. The man that was talking to you that you said was red in the face?

A. No, sir.

Q. That wasn't Mr. Pennington?

A. No, sir.

Q. That was one of the others?

A. That was one of the others.

Q. You don't know who he was?

A. No, sir.

Q. When you got outside, was that the time, when you got outside there was that when you had some conversation with Mr. Pennington?

A. He was with me.

Q. You say he had a conversation with you?

A. Yes, sir.

Q. Did you go back to work the next day?

A. No, sir.

Q. When did you go back?

A. I went down the next day.

Q. Went down the next day?

A. Yes, sir.

Q. That would have been Tuesday?

A. Yes, sir.

Q. You went back to work on Wednesday?

A. No, sir.

Q. When did you go back?

A. I went back to the freight office, but I went back to work Thursday.

Q. Went back to work Thursday?

A. Yes, sir, when they called us back.

Q. Was there anyone up there working Monday, Tuesday, or Wednesday?

A. We all worked Monday.

Q. You all worked Monday until what time?

A. It was around 4:20 in the afternoon when they came in.

Q. Then did you work on Tuesday?

A. No, sir.

Q. Did anybody?

A. Not as I know of, I wasn't there.

Q. You didn't go down yourself?

A. No, sir.

Q. You didn't work on Wednesday?

A. No, sir.

Q. Did you go down?

A. I went down a little while Wednesday morning.

Q. You went down a little while Wednesday morning?

A. Yes, sir.

Q. Was there any work going on then?

A. No, sir.

Q. Now, before these men came up there did you know that Birmingham had a work stoppage?

A. Someone said they heard over the wires that they did, yes, sir.

Q. Heard over the wires that they did?

A. Yes, sir.

Q. It was in both the Decatur and the Birmingham newspapers then, wasn't it?

A. I don't know.

Q. Didn't one of these men there on that occasion, did Mr. Pennington have a Birmingham newspaper?

A. Did Mr. Pennington have a Birmingham newspaper?

Q. Yes, did he have a Birmingham newspaper.

A. I wouldn't swear to that.

Q. Did you see a newspaper, Birmingham newspaper?

A. No, sir.

Q. At any time that any of the three of them were there?

A. I don't remember one.

Q. Do you know Mr. Toone?

A. Yes, sir.

Q. Who is he?

A. He is Sergeant Toone of the L&N.

Q. Sergeant Toone of the L&N?

A. Yes, sir.

Q. Does he carry a gun?

A. I have seen a gun on him.

Q. You saw him, he was there on this occasion, wasn't he?

A. He was not in the office.

Q. He was not in the office, he was outside there, wasn't he?

A. Yes, sir, he was on the outside.

Q. Didn't he have his pistol on him?

A. I don't know.

Q. Did you see him at all on this occasion?

A. Toone?

Q. Yes.

A. I saw him on the outside after I came out.

Q. You saw him, he was standing out there, wasn't he?

A. Yes, sir.

Q. Did you say anything to him?

A. No, sir.

Q. He didn't say anything to you?

A. No, sir.

Mr. Pettus:

That's all.

Mr. Simpson:

May it please the Court, we put Mr. Smith on out of order because he is the only man, he and one other man, the only men that had the combination to the safe, and that can carry on business there at Decatur. I would like to ask counsel if he will consent for him to be excused and go home.

Mr. Pettus:

If the Decatur office is shut down we will let him go back.

(Witness excused.)

The Court:

Call your next witness.

Mr. Simpson:

Call Mr. Logan.

WILLIAM L. LOGAN, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:

Q. Will you state your name to the jury, please, sir?

A. William L. Logan.

Q. Where do you live, Mr. Logan?

A. 4913 Avenue N, Central Park.

Q. How long have you lived in Birmingham?

A. Well, for the past—ever since I got out of the Service in '45.

Q. Who do you work for?
A. L&N Railroad.
Q. How long have you worked for the L&N Railroad?
A. It will be 10 years the 30th day of January, this coming January.
Q. You were working for them then before you went in Service?
A. No, sir.
Q. Oh no, '45; that's right?
A. Yes, sir.
Q. You went to work for the L&N when you got back from the Service?
A. Well, in '47.
Q. In '47?
A. That's right.
Q. All right now, Mr. Logan, what is your job for the L&N?
A. Fireman
Q. What do you do?
A. Fireman.
Q. What job, what Division, Seniority District are you in?
A. Alabama Mineral.
Q. Who is your Local Chairman?
A. T. A. Kennedy.
Q. That is your Local Chairman?
A. Yes, sir.
Q. Who is your General Chairman that Mr. Kennedy reports to?
A. Mr. Paschal.
Q. Mr. Paschal?
A. Yes, sir.
Q. Where is his office?
A. Louisville.

Q. In Louisville, Kentucky?

A. Yes, sir.

Q. Are you a member of the Brotherhood of Locomotive Firemen and Enginemen?

A. Yes, sir.

Q. Now, do you belong to either of the other Railroad Brotherhoods?

A. No, sir.

Q. How long have you been a member of that Brotherhood?

A. I was in the Engineers a while. I will say the last time I was with the Firemen I have been in there approximately 3 or 4 years. I don't know exactly, I would have to check the record on that.

Q. You are a member at the present time?

A. Yes, sir.

Q. Were you a member on the 23rd of October, 1955?

A. Yes, sir.

Q. Did you attend a meeting that was held at Mr. Parker's house on the afternoon of October 23, 1955?

A. Yes, sir. I did.

Q. What day of the week was that meeting held?

A. On Sunday.

Q. On Sunday?

A. Yes, sir.

Q. About what time, do you recall, what is your best recollection, that meeting was held?

A. Well, I think it was around 4:30 or shortly after. I think that was the time on it. I got there, however, shortly after 4:00 o'clock, some time between 4:00 and 4:20.

Q. Now where at Mr. Parker's, on Mr. Parker's premises was the meeting held?

A. Well, I guess it would be called the basement. In other words, it was not in the main living part of the house, it was in the garage or basement.

Q. In the garage or basement?

A. Yes, sir.

Q. Well, do you recall some of the people who were there?

A. Well, yes, sir.

Q. Will you mention as many as you now recall that were there?

A. Well, there was myself, Kennedy, Vann.

The Court:
Who was that?

The Witness:
Vann.

Mr. Simpson:
V-a-n-n?

The Witness:
V-a-n-n, Fleming, Grissom.

Q. Mr. Fleming and Mr. Grissom?

A. McCutcheon.

Q. McCutcheon?

A. Mr. Parker, Otts, Thomas, Southerland, and—Sutterlin and Southerland.

Q. All right.

A. Mr. Brown.

Q. Is that Mr. J. M. Brown, Jr?

A. Yes, sir. Hall.

Q. Mr. M. L. Hall?

A. Yes, sir.

Q. Or do you know his initials? Do you see Mr. Hall here in the Courtroom?

A. Yes, sir.

Q. One of the Defendants over here?

A. Yes, sir. Mr. Letchman.

Q. Letchman, all right.

A. Mr. Barnett.

Q. Mr. Barnett?

A. Yes, sir, Mr. Weldon.

Q. Mr. Weldon?

A. Yes, sir. Did I call Mr. Baum?

Q. I don't think you did.

A. Well, Mr. Baum.

Q. Mr. Baum?

A. Yes, sir.

Q. Do you recall any others, or were there others there?

A. Yes, sir, there was more there.

Q. Do you recall now who they were?

A. Did I name Otts?

Q. Well, was he there?

A. Yes, sir.

Q. I have forgotten.

A. Mr. Thomas.

Q. Mr. J. B. Otts, Jr?

A. Mr. Reese Thomas.

Q. Mr. Reese Thomas?

A. Yes, sir.

Q. A. R. Thomas?

A. Yes, sir.

Q. These men that you mentioned, are they the men that are sitting here in the Courtroom as Defendants in this case, is that right?

A. Yes, sir.

Q. Now, were there others besides them?

A. Yes.

Q. Or do you recall?

A. Well, there was some more there that probably I didn't see, and some fellows that I didn't know.

Q. About how many in all would you say were there?

A. Well, I would say approximately in the neighborhood of 15 or 20 men.

Q. 15 or 20 men?

A. Yes.

Q. All right.

A. Or maybe more, but I would say approximately that.

Q. Were they already in the basement or did you go in the basement with them when this meeting started?

A. No, sir, I was one of the first ones there.

Q. All right.

A. I went upstairs with Mr. Parker to start with, and then we came down out of the living room and they assembled, some more came up, and they assembled out there and finally we went into the basement.

Q. Went into the basement?

A. Yes, sir.

Q. When you got in there, these 15 or 20 men, did anybody kind of take charge of the meeting?

A. Yes, sir.

Q. Who did?

A. Mr. Otts.

Q. That is Mr. J. B. Otts, Jr.?

A. Yes, sir.

Q. Do you remember what, if anything he did to start off with?

A. No, I don't remember, just what he did to start with. In other words, the meeting wasn't called to order legally, as they usually do, a meeting is.

Q. Yes.

A. It was not called legally.

Q. Now, did Mr. Otts do anything or read anything or say anything?

A. Yes, he read some kind of a letter or statement or something there. I don't remember the contents of it, but he read something.

Q. He read something to the meeting?

A. Yes, sir.

Q. Do you recall anybody else saying anything?

A. Well, there was a good bit said but I don't recall too much of it directly.

Q. Well, what was it said about?

A. Sir?

Q. Do you remember the subject of the discussion?

A. Well, it was in regard to the elimination of the hostler helpers jobs out at Boyles.

Q. In regard to the elimination of the hostler helpers jobs out at Boyles?

A. Yes, sir.

Q. What about that?

A. They was replacing them, the Company was going to replace them with laborers, the best I remember.

Q. That was what was said there?

A. Yes, sir.

Q. Now then did anybody say anything about doing anything about it?

A. Well, they were talking about striking on account of it in other words, they said if they got by with that, why then the firemen would be pulled off the job, first one thing or another.

Q. First one thing and then another?

A. Yes, sir.

Q. All right. In that discussion do you recall anybody else besides Mr. Otts that said anything that you recall?

A. Well, they was more or less in a group, and I wasn't up in the group, and the discussion that went on I couldn't verify as to just exactly what was said over there in the group.

Q. Well now you had been asked to come to that meeting by whom?

A. Mr. Kennedy.

Q. Did Mr. Kennedy say anything at that meeting?

A. Well, yes, sir, he did.

Q. Do you recall anything that he said?

A. Yes, sir, he told the men along in the meeting, I don't know just how far along, but in the meeting there he told them any kind of a strike would be illegal at that time.

And he asked them to take it up legally, through proper channels, if they were going to strike. In other words, anything that they would do there just off momentarily would be wrong, and handle the situation properly, through local officials or legally, whichever way it was.

Q. Did the meeting agree with him on that?

A. No, sir, they didn't agree to that.

Q. What was said, and what was done about that?

A. Well, they finally agreed to set a strike at 9:00 o'clock Sunday night.

Q. At 9:00 o'clock that night?

A. That's right.

Q. To call a strike at 9:00 o'clock that night?

A. That's right.

Q. Now, when they did that, did they call for any pickets to go on duty?

A. Yes, sir.

Q. What was done about that?

A. Well, the best I remember they asked for pickets, you know, volunteer, hold up their hands.

Q. I see. Well, did you hold up your hand?

A. No, sir, I did not.

Q. Did any of them hold up their hands?

A. Yes, sir, there was, I don't know how many, I didn't count them, but there was a good many of them held their hands up. And there was probably some that didn't.

Q. All right, sir.

A. At least I was one of them.

Q. Did anyone say anything about the men that were not willing to picket, whether they ought to be there or not?

Mr. Taylor:

We object to leading the witness.

The Court:

I sustain the objection.

Q. Did anybody say anything then about the men who did not hold up their hands?

A. Well, yes, sir, there was something said, but now who said it, I don't know about that.

Q. I won't ask you who said it, but what was it that was said about that at that meeting?

A. They said that anybody that didn't want to picket, take their part as a picket and so on, that they wasn't welcome at the meeting.

Q. You couldn't tell us who said that?

A. No, sir, I can't.

Q. When that was said to you, what did you do?

A. Well, momentarily Kennedy and myself and Vann left.

Q. Momentarily?

A. Yes, sir.

Q. All right, you all left?

A. Yes, sir.

Q. When you left the meeting, what did you do? When were you due to go back on duty?

A. Well, I was on the Extra Board, subject to call.

Q. You were subject to call?

A. Yes, sir. When my turn got first out, why then I was subject to be called wherever they might need me.

Q. I see. Then did you do anything about checking yourself off of the Extra Board?

A. Yes, sir.

Q. What did you do?

A. After I talked with Kennedy and Vann for a little while, not very long, well, I drove directly to the roundhouse and contacted the engine dispatcher and had him put me on the Off Board.

Q. On the Off Board?

A. Yes, sir.

Q. That means you were not ready to go on service?

A. I was out completely.

Q. You were out completely?

A. Yes, sir.

Q. How long after you left the meeting, and after you had heard this strike set for 9:00 o'clock that night, how long was it before you went down and did that?

A. It was shortly after 5:00 o'clock. I think, the best of my knowledge, that I laid off before 5:30.

Q. Before 5:30?

A. With the engine dispatcher.

Q. Now, who was the engine dispatcher?

A. Mr. Jordan.

Q. Mr. Jordan?

A. Yes, sir.

Q. Did you tell him then why you were laying off?

A. Well, he asked me.

Q. All right, what was said?

A. Well, I told him, I says "I've got business out of town", and I did.

Q. You had business out of town?

A. Yes, sir, and I went out of town.

Q. And you went out of town that night?

A. Next morning.

Q. Next morning?

A. Yes, sir.

Q. Now, you had not intended to quit work, or come off the Extra Board, had you?

Mr. Pettus:

We object to that, what his intention was.

The Court:

I sustain the objection to the intention.

Q. Do you know who else that was in that meeting had themselves checked out as sick or going out of town or something like that that night?

A. I beg your pardon?

Q. Do you know who else was in that meeting up there and heard this statement that you talked about, strike at 9:00 o'clock, do you know who else was at that meeting and checked out as sick or going out of town?

A. You mean laid off?
Q. Yes, on that afternoon.
A. Well, I know Mr. Kennedy and Vann laid off.
Q. You know Mr. Kennedy and Mr. Vann did?
A. Yes, sir.
Q. All right.
A. But they didn't go to the roundhouse with me. I think—I went, but I won't say how they laid off, but they laid off.
Q. You went there in person?
A. I went there personally.
Q. Were you scared to work there?

Mr. Pettus:
We object to that.

Q. During that lay off?

Mr. Pettus:
We object to that.

The Court:
Overruled.

Mr. Pettus:
We except.

A. You want me to answer that question?
Q. Yes, sir.
A. Well, yes, sir, any kind of strike I would be scared to work on account of bodily harm.
Q. Scared of what?

Mr. Pettus:
I move to exclude the answer on the same ground.

The Court:
I didn't get the answer.

(The answer was read.)

Mr. Simpson:
On account of bodily harm. All right.

Mr. Pettus:
We move to exclude that answer.

The Court:
I will exclude everything except the affirmation of "Yes, sir."

Mr. Simpson:
We except.

Q. You were in the Army and in active service for about 5 years, weren't you?
A. Yes, sir, approximately, just short of 5 years.
Q. Just short of 5 years?
A. Yes, sir.
Q. You said you would have been afraid to go to work there that night?

Mr. Pettus:
We object to that, leading and suggesting.

Mr. Simpson:
You can have the witness.

The Court:
I sustain the objection.

Cross Examination.

By Mr. Taylor:
Q. Mr. Logan, when did you last work before you went to this meeting Sunday afternoon?
A. I came in on Train No. 94 out of Anniston, arriving at Boyles, I would have to check the register on that, but it was between 4:00 and 5:00 o'clock p.m., Sunday morning.
Q. What time did you leave Anniston on that run?
A. I would have to check the register on that. Call time is 9:30.
Q. Was Mr. Kennedy on that run with you?
A. No, sir.
Q. Had you heard anything before you left Anniston about any work stoppage in Birmingham?
A. I sure didn't.
Q. All right, sir. Before you went to that meeting on Sunday afternoon, had you heard about the abolition of the hostler helpers jobs?
A. No, sir. Well now Mr. Kennedy called me, that's the first I knew about it. He woke me up about noon of Sunday before the strike.
Q. And that is the first you knew about the abolition of the hostler helpers jobs?
A. Yes, sir.
Q. You hadn't seen that bulletin that was posted down there at the Boyles Yard?
A. If it was out there I didn't read it. I was in a hurry to get home.

Q. Did anybody ever show you a list of the people that were supposed to have been at Shorty Parker's place?

A. I beg your pardon?

Q. Did anybody ever show you a list of names and tell you that they were supposed to have been at Shorty Parker's place?

A. That evening?

Q. No, any time any time since then up to now.

A. Why yes, I have named them over.

Q. I say did anybody ever show you a list of names and tell you that these men were supposed to have been at Shorty Parker's house?

A. That is supposed to have been there? No, I never seen a list that was supposed to have been there.

Q. Did anybody show you—

A. I saw a list of the men that was there, the men I think was there.

Q. Who showed you that list?

A. A lawyer.

Q. When did the lawyer show it to you?

A. Saturday.

Q. And that is how you were able to name off those names here, wasn't it?

A. No, sir.

Q. Based on that list?

A. No, sir.

Q. Did you ever tell anybody who you saw at the meeting?

A. I didn't talk about that meeting much.

Q. When was the first time you told anybody you saw anybody at that meeting?

A. Well, Mr. Robey took a statement from me, I forget what day, I think it was the first part of

February, about the 6th I believe, and that is the man that I told about it.

Q. Did you name all of these people that you named, when you talked to Mr. Robey, that you have named from the witness stand?

A. Yes, sir.

Q. How long do you think you stayed at that meeting, Mr. Logan?

A. How long did I stay at that meeting?

Q. Yes, sir.

A. I would say approximately 30 to 40 minutes.

Q. Did you leave at the same time Mr. Vann left?

A. Yes, sir, and Mr. Kennedy.

Q. Now Mr. Vann heard everything that you heard at that meeting, didn't he?

A. Well now its possible that he heard some things that I didn't hear, and I might have heard some things that he didn't hear.

Q. Well what I mean is you all were both there the same length of time, is that correct?

A. That's right. Well I got there—we were in the meeting at the same time. In other words, I arrived at Mr. Parker's ahead of him but we was at the meeting at the same time.

Q. And you left at the same time, is that correct?

A. Yes, sir.

Q. Now this was just an informal gathering over there wasn't it, Mr. Logan? There wasn't anybody that said "The meeting will now come to order"?

A. No, sir.

Q. And that sort of thing?

A. No, sir.

Q. And there wasn't anybody that took the lead in the discussion, was there?

A. Well, I would say Mr. Otts did.

Q. Weren't there little groups of you talking all around all the time?

A. Yes, that's right, they was more or less grouped up, that's right.

Q. They were talking at the same time?

A. Yes, sir.

Q. One group would be talking over here and one group would be talking over there?

A. More or less.

Q. Now I believe you said that after you left the meeting that you talked to Mr. Kennedy and Mr. Vann, is that correct?

A. That's right. We left together.

Q. You three decided to call up and lay off, is that correct?

A. Well, I went down there and laid off. They probably called in and laid off. I don't know how they laid off, but I went to the roundhouse personally and laid off.

Q. You and Kennedy and Vann made that decision together, is that right?

A. Yes, we decided to lay off.

Mr. Taylor:

That's all.

Mr. Simpson:

That's all, Mr. Logan.

The Court:

Come down. Do you have any further use for this witness?

Mr. Simpson:

No, sir, I would like to ask that he be excused.

The Court:
The witness will be excused unless there is objection.

(Witness excused.)

Mr. Simpson:
Mr. Strong, let me have that deposition of Parker, please.

Your Honor, I have here the deposition of one of the Defendants in this case, Mr. H. K. Parker, and I would like to introduce the gentleman, beginning on Page 57, and read to the jury down about two-thirds of the way of the page.

Mr. Pettus:
Let me check that Mr. Simpson.

Mr. Simpson:
All right. I will give you the question beginning and the question ending. You see the question about where "Did you say anything?" about two-thirds of the way down on page 57, "Did you say anything about you were going to try to help get them their jobs back?", about two-thirds down?

Mr. Pettus:
Yes, I've got it.

Mr. Simpson:
All right. Now then from there through the balance of 57, all of 58 and 59 down to the words "Q. But it was before dark that they had adjourned", and "A. Yes, sir", do you see that?

Mr. Pettus:
Yes, sir.

Mr. Simpson:
I would like to offer that much of this deposition in evidence, may it please the Court, and if I may I would like to read it.

The Court:
All right. You can offer it. Of course, you have a right to offer any other part of it in evidence that you want.

Mr. Pettus:
What is that, Your Honor?

The Court:
I say you can offer any other part of it if he offers part of it.

Mr. Pettus:
Thank you, Your Honor.

The Court:
All right.

Mr. Simpson:
May I read this now, Your Honor?

The Court:
Yes, you may read it.

Mr. Simpson:
This is a part of the deposition, Your Honor, not all of it by any means:

"Q. Did you say anything about you were going to try to help them get their jobs back?"

Mr. Simpson:
Your Honor, may I state to the jury that these are questions that were asked by counsel of the Defendant Parker?

The Court:
Yes, this is a pretrial deposition, isn't it?

Mr. Simpson:
Yes, sir.

The Court:
Yes. Gentlemen, each party has a right to take the deposition of the other in a pretrial proceeding before a Commissioner or Notary acting as a Commissioner, and that was done in this case. Mr. Parker's testimony was taken and he is going to read part of it to you at this time.

Mr. Simpson:
We offer this part:

"Q. Did you say anything about you were going to try to help them get their jobs back?
"A. We said we were going to try to get their jobs replaced, try to get them put back.
"Q. You were going to try to get them put back on their jobs?
"A. Yes, sir.
"Q. Did you say that you were going to try to help?
"A. No, I don't remember what—

"Q. Was that agreed to by all of you, that you were going to try to help?

"A. Yes, sir.

"Q. All of you agreed you were going to try to get them to put them back on their jobs?

"A. Yes, sir.

"Q. Did you discuss how you were going to help them?

"A. No, sir, that wasn't brought up.

"Q. How were you—you were going to try to help them to get their jobs back. How was it you were going to help them get their jobs back?

"A. Well, individually I could not, but we were going to help them.

"Q. You were going to help them?

"A. We were all going to try as a body to try to get the jobs put back.

"Q. They all agreed there together that you were going to try to help them get their jobs back?

"A. Yes, sir.

"Q. All of you together, is that right?

"A. Yes, sir.

"Q. You along with the rest of them, the group of you were going to do this?

"A. Yes, sir.

"Q. Had you discussed how you would accomplish this, how you were to get them put back, the group of you?

"A. No, sir,

"Q. Did anybody ask there what can we do to get these men's jobs put back on the job?

"A. If that was brought up I don't remember it.

"Q. Well, what was said with respect to getting the jobs back?

"A. Well, we just agreed, all of us, as a whole, to try to get the jobs put back. We didn't specify no—can't say no certain man, or made no time when we were going to say it or nothing, just said we were all going to try to get them put back.

"Q. When were you going to do that?

"A. Some time in the near future after that meeting.

"Q. Now about what time did the meeting adjourn?

"A. Some time in the afternoon.

"Q. And about what time in your best recollection?

"A. It was before dark, I don't remember what time it was.

"Q. But it was before dark that they had adjourned?

"A. Yes, sir."

I offer that part of the deposition, if Your Honor please.

The Court:

All right. Call your next witness.

Mr. Gibson:

Mr. L. P. Jordan.

L. P. JORDAN, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Gibson:

Q. Is this Mr. Lowell P. Jordan?

A. Yes, sir.

Q. Where do you live, please, sir?

A. 1431 Sloan Avenue, Tarrant.

Q. Do you remember the occasion in October, of 1955, when there occurred at Boyles a strike or work stoppage or something of that nature?

A. Yes, sir.

Q. Were you an employee of the L&N Railroad Company?

A. Yes, sir.

Q. Were you at work in the Boyles Yard that night?

A. Yes, sir.

Q. What do you call the shift that you were working?

A. You mean what time I go to work and get off?

Q. What do they designate that, and what were the hours?

A. 3:00 to 11:00.

Q. Is it referred to as a certain shift?

A. I don't get you there.

Q. Well, first, second, third, fourth?

A. Second shift, yes, sir.

Q. What time had you gone to work that day?

A. Well, I got there about 2:30. I actually went to work at 3:00.

Q. During the time that you were at work, will you tell these gentlemen whether anything unusual occurred?

A. Well, yes.

The Court:

Is this on Sunday?

Mr. Gibson:

Yes, sir.

The Witness:

Yes, sir.

Q. All right.

A. There was something unusual occurred all right. Now, I don't know which way you want it there.

Q. Did you receive any telephone calls during that shift?

A. Yes, sir, plenty of them.

Q. Were there an unusual number of telephone calls at any time during that shift when you were at work?

A. Well, I wouldn't say exactly unusual. Of course, there was a few more than what we ordinarily got.

Q. Now, as engine dispatcher, tell these gentlemen here in a general way what your duties were?

A. Well, the engine dispatcher, as a general rule, is calling his engineers and firemen, answering the telephone, doing other clerical work in the office.

Q. All right.

Mr. Pettus:

Will you speak up? I can't hear you very well.

The Witness:
All right.

Q. Do you have any records that you keep, or anything of that kind?

A. Yes, sir, there is different records there that we keep all the time.

Q. And if a man calls up and asks you to put him back on, do you make some record of that?

A. Yes, sir.

Q. Or did you then?

A. Yes, sir.

Q. And if a man calls up and asks you to take him off, either a regular job or road job or Extra Board, would it be your duty at that time to do that also?

A. Yes, sir.

Q. Tell the jury whether or not it would also be your duty to make some record of that incident, that telephone call?

A. Yes, sir, usually, if he is laying off we specify a reason, why, and that is put on the book by his name, why.

Q. How about the time, do you make any record of that?

A. Yes, sir, we put a time of the call, when we complete the call, well then naturally we look at the clock, and that time is usually put at the end of whatever he laid off for, or by his name.

Q. Now, who did that writing down there on the second shift on Sunday, October 23?

A. I did.

Q. What did you write it up in?

A. That book you are holding there.

Q. Is that provided you by your employer to make those entries in?

A. Yes, sir.

Q. I show you a book with a cardboard back on it, Mr. Jordan?

A. Yes, sir.

Q. Will you tell the jury whether you ever saw that book before?

A. Yes, sir, I saw it.

Q. What is that book?

A. Well, it is referred to at the L&N as the Martin Book, which is a lay off book, that is the railroad term, what we call it.

Q. I show you some words at the top of page 4 "Laid off 10-23-55"?

A. That's right.

Q. Who made that writing?

A. That writing is put on there at 12:00 o'clock midnight by the third shift man.

Q. Before you had come on?

A. Yes, sir. Well, that is just after I went off.

Q. Oh, yes.

A. Now this was on there before I went on at 3:00 o'clock. In other words, our hours run from 12:00 midnight to 12:00 mignight. This was put on, the third shift man put this on. He turns over and starts this off at 12:00 o'clock.

Q. Now indicating on there a certain line which reads this way: "Fireman T. A. Kennedy buss"?

A. That would be business.

Q. 5:15?

A. Yes, sir.

Q. Who made that entry, if you know?

A. I did.

Q. Where did you get that information?

A. From Mr. Kennedy over the telephone.

Q. I show you an entry just below that, I am pointing to it with my finger, "Fireman D. C. Vann, sick", 5:16?

A. Yes, sir.

Q. Who made that entry?

A. Mr. Vann.

Q. You misunderstood my question.

A. Oh.

Q. I said who made that entry.

A. Oh, I did, I did.

Q. And where did you get that information?

A. From Mr. Vann over the phone.

Q. Below that I show you another fireman, W. L. Logan, "X B". What does that mean?

A That means he is on the Extra Board. No reason. He didn't give any reason or why at all.

Q. The time, 5:25?

A. That's right.

Q. We have another one here, and then just below that I point out another, Fireman M. L. Hall, X Board, Extra Board?

A. That's right.

Q. Time?

A. 5:25.

Q. If you will, be good enough to read the next one?

A. Engineer H. E. Southerland, Job No. 48, that's what it is, sick.

Mr. Simpson:

Now I couldn't hear, sickness was it?

The Witness:

Yes, sir, sick.

Q. All right, sir. Now this one right here?

A. Hostler C. L. McCutcheon. In other words, we didn't put it over here because he is a hostler and we mentioned him as a hostler here.

Q. Yes, sir.

A. 5:45.

Q. Reason?

A. Sick.

Q. All right, sir, this one now?

A. Fireman J. M. Weldon was on the Extra Board, laid off sick at 5:50.

Q. And below that?

A. R. A. Sutterlin, Job 57, laid off sick. 5—that should have been about 5:51, but I've for them both 5:50.

Q. All right, next?

A. That is Fireman A. R. Thomas. He is a hostler, 5:53, sick.

Q. Now, I think you said you made all of those entries?

A. Yes, sir, from here down through here (indicating).

Q. Was the information you entered on that book received by you in the regular course of your duties over the telephone?

A. Yes, sir.

Mr. Gibson:

We offer the book just referred to.

The Court:

That portion of the book, unless there is objection, will be admitted.

(Plaintiff's Exhibit No. 1 was marked for identification.)

The Court:
What pages are you offering there?

Mr. Gibson:
It is not a page.

The Court:
Well, the date shows, the date shows on there, doesn't it?

Mr. Gibson:
The date is 10-23-55.

Mr. Simpson:
That will be Plaintiff's Exhibit 1, will it not?

The Clerk:
Yes, sir.

Mr. Gibson:
That's all.

Mr. Pettus:
Let me have that book. I would like to see it.

Cross Examination.

By Mr. Pettus:

Q. Now, on that same page that he was reading from here is a fireman named C. Pearson or Persons, III, 5:46; and a man by the name of C. E. Warren, sick, and Huckaby was sick, is that right?

A. Yes, sir.

Q. Now as engine dispatcher where was your office Mr. Jordan? Is it Jordan or Jordon?

A. Either one, it don't make any difference. I n called both.

Q. Where was your office?

A. Well, we are in one corner of the engineer and firemen's washroom.

Q. One corner of the engineer and firemen's washroom?

A. Yes, sir.

Q. And was it just the engineers and the firemen that it was your duty to call and to report in like this?

A. Yes, sir, that's all.

Q. In other words, you didn't handle the trainmen and other crew members, is that right?

A. No, sir, we only have the engineers and the firemen.

Q. You only have the engineers and the firemen?

A. Yes, sir.

Q. Now, Mr. Gibson asked you about anything unusual happening that evening with regard to men calling in. Was there anything else unusual that happened a little after that with regard to instructions to call crews for trains?

A. I don't think I get you.

Q. Well, let me ask you this, were there any men called for any train after No. 4?

A. No, sir.

Q. What time was Train No. 4 supposed to be called?

A. Well, it was called for 8:55. I don't remember. I might have given it out at 7:50—no. I mean 6:55 is the ordinary call time, 2 hours.

Q. 2 hours?

A. But sometimes I give it out a few minutes before that.

Q. But ordinarily you call 2 hours before the train time?

A. Yes, sir.

Q. And there were no calls made on Sunday evening for any train later than No. 4, which was set for 8:55, is that right?

A. That's the last call I put out.

Q. Ordinarily you would have been calling throughout the evening, would you not?

A. Yes, sir.

Q. But on this particular evening after about 7:00 o'clock there was no further call, is that right?

A. Not after No. 4 was called, no, sir.

Q. Not after No. 4 was called?

A. That was the last thing that was give out.

Q. And that stopped about 2 hours before 8:55?

A. Yes, sir.

Q. Who is in the office where you are, Mr. Jordan?

A. Well, there's not supposed to be anyone outside of the roundhouse foreman. Every now and then one might step in to get a drink of water or something.

Q. Who was the roundhouse foreman on duty on October 23, 1955?

A. Mr. C. S. Crow.

Q. Mr. C. S. Crow?

A. Yes, sir.

Q. What was your shift that evening?

A. 3:00 to 11:00.

Q. 3:00 to 11:00?

A. Yes, sir.

Q. Did you leave before 11:00?

A. Yes, sir.

Q. About what time did you leave?

A. 9:20 exactly.

Q. 9:20?

A. Yes, sir.

Q. Did you go out by yourself?
A. Yes, sir.
Q. Did anybody tell you to go out?
A. No, sir.
Q. You just got up and walked out?
A. That's right.
Q. And what had happened before you walked out, if anything?
A. Well, everybody had vacated the washroom and there wasn't nobody there. I figured I wasn't needed, so I walked out too.
Q. And you just got up and walked out by yourself, is that right?
A. Yes, sir. Naturally I straightened up the books and left the office in shape before I went out.
Q. Was there anybody left there when you walked out that you know of?
A. No, not that I can remember was there a soul in the washroom when I walked out.
Q. Was there any L&N official or employee still there when you walked out?
A. Well now their office is about a quarter of a mile from us. I couldn't say on that. They could have been over there.
Q. But at 9:20 you just got up and walked out, is that right?
A. Yes, sir, there wasn't a soul around there.
Q. Had you seen or heard of anybody else walking out prior to that time?
A. Well, yes, I had heard that they was all—in other words, wasn't a soul around there, they had gone, yes, sir.
Q. But no one told you to walk out?
A. No, sir, I—there wasn't a soul told me.

A Juror:
Judge, do I understand that this man is an engine dispatcher?

The Witness:
Yes, sir.

The Court:
That's right.

Mr. Pettus:
Let me see that book again.

The Court:
The page is marked there, No. 10 at the top.

Mr. Pettus:
Right.

Q. On October 22, are there lay offs on that date too?
A. Yes, sir.
Q. There are?
A. Yes, sir.
Q. In other words, the—
A. This is your lay offs, and that is where they report.
Q. That is where they report?
A. Yes, sir.
Q. Now on October 22 Mr. A. B. Luster laid off at 11:07, and all of these here?
A. Yes, sir.
Q. These names, as you go down, on October 22, Mr. Purkey laid off, did he?
A. Yes, sir.

Q. That is that name there, 510?
A. Yes, sir, C. B. Purkey, and then I started out.
Q. Mr. Schilleci laid him off?
A. Yes, he was on that Extra Board, on mileage.

Mr. Pettus:
We ask that the lay off page for October 22, 1955, Plaintiff's Exhibit 1, be marked for identification.

(Defendants' Exhibit No. 2 was marked for identification.)

Mr. Pettus:
We haven't offered that yet, we just have it marked for identification.

Q. Mr. Jordan, what instructions in the usual course of business did you receive to call trains, like when you were calling, you said this evening you called Train No. 4; who gave you those instructions?
A. The chief caller.
Q. The chief caller?
A. Yes, sir.
Q. Who was that?
A. That night Willie Wren was on duty.
Q. He was on duty?
A. Yes, sir, he was chief caller.
Q. Was he your superior?
A. No, sir, he is not over me. We work in co-operation but he is not a superior to me, no, sir.
Q. Well, how would instructions come down to you to call a train?
A. Well, to start off at the starter, is that what you want?
Q. Yes, sir.

A. And on down the channel?

Q. Yes, sir.

A. Well, to start off with I reckon it is the Yard Dispatcher.

Q. The Yard Dispatcher?

A. In other words, his clerk gives him the line of cars that they have, and they want say a chain gang south. Then he calls the chief caller, "Give me a chain gang south."

The chief caller calls me, and wants a crew and engine for a chain gang south. I give him an engineer and fireman and maybe an engine then if the foreman has given me an engine. If he has not, then later I give it to him.

He then takes those two, puts them with the engine crews and gives it to the call boy, and the call boy then calls the crew.

Q. And what official makes the decision that there is a train going south, in other words, to run a train?

A. The Yard Dispatcher.

Q. Who is that?

A. Well, that night it was—what's the name? It was Albert—

Q. Albert Johnson?

A. Yes, sir, Johnson.

Q. Is he the Assistant Yard Master?

A. I don't think he is listed as Assistant Yard Master.

Q. No? What is his title?

A. Train Dispatcher I believe.

Q. Train Dispatcher?

A. Yes, sir, Train Yard Dispatcher or Train Dispatcher.

Q. But you received instructions when you are to call for a train going out, do you not?

A. Yes, sir.

Q. On this particular night you received no instructions for any train later than No. 4?

A. That's the last call I had.

Mr. Pettus:

That's all.

Re-Direct Examination.

By Mr. Gibson:

Q. Mr. Jordan, you were in the Courtroom today, this morning, when the witnesses were all sworn, were you not?

A. Yes, sir.

Q. And received instructions from Judge Grooms?

A. Yes, sir.

Q. Have you been in attendance out in the hall or in the witness room except during the noon recess ever since?

A. Yes, sir.

Q. I will ask you whether or not shortly before you came in this room, this Courtroom to get on the witness stand one or more persons came to you and attempted to talk to you about what your testimony would be?

A. Not that I know of, no, sir.

Q. That did not happen?

A. No, sir, not that I know of.

Q. You are sure?

A. We have been laughing and joking out there, but so far as talking to me about my testimony, no, sir.

Mr. Gibson:
All right.

The Court:
All right, this witness will be excused unless there is objection. Is there any objection?

Mr. Pettus:
No objection.

The Court:
All right.

(Winess excused.)

The Court:
Call your next witness.

Mr. Gibson:
Mr. Ben Mitchell.

BEN MITCHELL, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Gibson:
Q. Is this Mr. Ben Mitchell?
A. Yes, sir.
Q. Ben M. Mitchell?
A. Yes, sir.
Q. Where do you live, Mr. Mitchell?
A. I live at Evansville, Indiana now.

Q. Where were you living in October, of 1955?
A. In Birmingham.
Q. What was your occupation?
A. Trainmaster, Birmingham, Boyles Terminal.
Q. Speak up now, please, sir. That gentleman down there sitting by himself has to hear you. If he can hear you the rest of us can.

A Juror:
Trainmaster?

The Witness:
Trainmaster, Birmingham, Boyles Train Yard.

Q. Was that for the L&N Railroad Company?
A. Yes, sir.
Q. How long have you been with the L&N Railroad Company?
A. Since March, 1926.
Q. Did you start out with them as Trainmaster?
A. No, sir, I started out as a switchman.
Q. During the time you have been promoted?
A. Yes, sir.
Q. What is your ~~present position~~ with the Railroad?
A. Trainmaster.
Q. Where?
A. Evansville.
Q. In October, of 1955, what were your usual office hours or working hours?
A. Usually from 8:00 until 5:00, and on Saturday about 1:00 or 2:00 in the afternoon, and on Sunday to noon.
Q. Where was your office supposed to be?
A. Boyles.

Q. Where in the Boyles installation area was your office located?

A. In the Yard Office.

Q. Were there other people employed in the Yard Office?

A. Oh, yes, sir, quite a few.

Q. Did they work the same hours you did or were they on shifts?

A. They were on shifts, continuous shifts. Of course, on Saturday and Sunday some of the jobs were blank.

Q. What titles did they have, or what sort of work did they do?

A. We had our clerical force in the office, and our Yard Dispatchers in the office, chief callers that call crews. Our records are maintained there.

Q. Were you at Boyles on that Sunday night that I referred to?

A. Yes, sir.

Q. As October 23 at or about 8:30 or 9:00 o'clock?

A. Yes, sir.

Q. I understood you to say your office hours were 8:00 to 5:00. Had you been working continuously up until 8:30 or had you been away and come back?

A. I had been away and returned I imagine around 6:00, something like that.

Q. Was the Boyles Yard operating normally, in the usual way when you left it at 5:00 o'clock?

A. Yes, sir.

Q. Tell the jury whether or not that was also true when you returned to it at 6:00 o'clock?

A. Yes, sir, it was.

Q. Did any of your clerks protest to you or express any disagreement with the action of the Railroad Company with reference to certain hostler helpers?

A. I can't say that they did. I don't remember it.
Q. About how many of them worked in that office at that time?
A. That was around nine.
Q. During the night or evening of Sunday, tell the jury whether or not anything unusual occurred?
A. What time do you have reference to?
Q. About 8:30 or 9:00 o'clock.
A. Well, probably about that time there was three men that came in the Yard Office and—

The Court:
Two men?

The Witness:
Three. And said "We're shutting the Railriad down. Everybody go home."

Q. Did you recognize those men?
A. Yes, sir.
Q. Will you name them, please, sir?
A. Myrick and Baum and Davis.

Mr. Pettus:
I didn't get those names.

A. Myrick and Baum and Davis.
Q What was Mr. Myrick's job?
A. He is a fireman, locomotive fireman.
Q. What is Mr. Davis' job?
A. Locomotive fireman.
Q. What is Mr. Baum's job?
A. He is a fireman also.
Q. Look around the Courtroom and tell us whether you see him in here?
A. I see Mr. Davis.

Q. Do you know Mr. Baum?

A. Yes, sir, I see him over there.

Q. About what time of night did you say that was?

A. About 8:30 to 35, something like that, 45.

Q. Was that remark addressed to you, that statement that was made?

A. Well, I would say yes, as well as to everybody else in the office too.

Q. How were the three men dressed? I mean were they in work clothes or street clothes, if you recall?

A. I imagine they would be in what you call street clothes.

Q. Do you remember about that definitely either way?

A. Yes, sir, I would say so.

Q. All right. When Mr. Baum and these other two men came in I will ask you whether or not either one of them had anything in his hand?

A. Two of them had some short sticks, yes, sir.

Q. Who were those two?

A. Baum and Myrick.

Q. About what size sticks were they?

A. Oh, something like an inch in diameter, about 18 inches to 2 feet long.

Q. Have you ever seen anything like that around the Railroad property, the sticks that they had?

A. They don't use them in the service of the Railroad, no, sir.

Q. That's what I mean?

A. No, sir.

Q. Do you know why they were around with those sticks about the size you described?

A. No, sir.

Q. Did the clerks do anything after they heard that statement?

A. They got up and walked out as quickly as possible.

Q. That is a small room, isn't it?

A. About as large as this room right here.

Q. What tone of voice was the announcement you heard made in?

A. Well, I would say just the normal conversation, but loud enough for everybody to hear it.

Q. You were about as far away from the door as anybody, weren't you?

A. No, I was over at the chief clerk's desk, about 30 feet I guess from the door.

Q. Did you hear clearly what was said?

A. Yes, sir.

Q. I think you said the clerks then got up and left?

A. Yes, sir.

Q. What, if anything did you do?

A. Well, when they all started walking out I asked the chief clerk, who was Mr. Duncan, to wait until I could go and get my lunch, which I had prepared and brought over there, and then I would walk out with them, which I did.

Q. Mr. Mitchell, was that the first that you had heard about a walkout that night?

A. No, sir.

Q. What is the first you had heard about it?

A. Someone called me that afternoon around 2:00 o'clock I imagine and told me about it, said they was going to come off about 4:00. So I went on home then and got my lunch and changed clothes and came back. That's the reason I was at the office when this came off.

Q. You received a telephone call?

A. Yes, sir.

Q. Do you know who made that call?

A. No, sir.

Q. Did he identify himself?

A. No, sir.

Q. But he did tell you there was going to be strike come off?

A. He gave me that information and hung up, yes sir.

Q. Did you do anything about putting out the lights in the Yard Office?

A. No, they were turned off while I was going up the stairs after my lunch.

Q. That was your office, wasn't it?

A. Yes, sir. All of the lights in the whole office went out.

Q. Did you tell anybody to turn them out?

A. No, sir.

Q. Do you know who turned them out?

A. No, sir.

Q. When you got outside the Yard Office was there anybody else out there?

A. Oh, there were some 15 to 20.

Q. Did you recognize anyone in the group?

A. Well, just like I told you, I walked over with Duncan. He and I was the last two out. And Mr. Baum was there, and so was Myrick. We all walked over together.

Q. Did you have any conversation with Baum or did you hear Baum say anything out there outside of the Yard Office when you went out?

A. Mr. Gibson, I don't know; I can't say.

Q. Do you recollect about that?

A. Well, they was all—a lot of talking going on, and they shut the plant down, when they shut the Railroad down, and things of that kind.

Q. Do you remember who said that?

A. No, I don't believe I can say.

Q. Now, you and Baum and somebody else you say went on out together?

A. Well, Duncan and I were the last two. Of course, somebody was right ahead of us. All of us went on out. And Baum and Myrick and Davis, we were all right there together.

Q. Did you have any conversation with Baum as you were going out of the Yard?

A. I don't remember whether we did or not. That is, all of us were talking.

Q. All right, sir. Where did you go from there?

A. Went through the Yard to the highway, on out the gate, and went on home.

Q. That was Sunday night?

A. Yes, sir.

Q. At about what time?

A. I imagine that was 9:00 o'clock.

Q. Did you go to your office Monday morning?

A. I tried to but there was so many down there I couldn't, so I went to the Birmingham Office.

Q. About how many people were there when you arrived?

A. At the gate I imagine there was 15 or 18, something like that.

Q. Which gate was that?

A. Both of them, both gates, one at the Master Mechanics entrance, and the one we went out of that night.

Q. Did anyone say anything to you about whether or not you could go in?

A. Yes, sir, I believe it was Reese Thomas I believe told me we couldn't go in.

Mr. Taylor:
We move to exclude what he believes.

A. Sir?

The Court:
I sustain the objection.

Q. What is your best recollection about the name of the person who told you you couldn't go in?
A. Reese Thomas is the man that told me I couldn't go in.
Q. All right, sir. You know Reese Thomas?
A. Yes, sir.
Q. How long have you been knowing him?
A. I imagine 25 years, off and on.
Q. There were other men there you said with him?
A. Oh, yes.
Q. Were they just wandering around, or were they grouped up or bunched, or how was it?
A. They were just milling around the gate.
Q. Thomas was one of them?
A. Yes, sir.
Q. Do you recall that any other one of these Defendants was also there?
A. I don't remember.
Q. I'm talking about your first visit, or attempt to go to your office on Monday morning. You say you were down there?
A. No, sir, not at Boyles there, no, sir.
Q. What happened, what did you do next?
A. I went on to the Superintendent's Office in Birmingham.
Q. Where is that located?
A. 1909 Morris Avenue.

Q. Is the Superintendent's Office down on the street?

A. On the second floor.

Q. When you got down to Morris Avenue did you see any Railroad Company employees that you recognized there?

A. Yes, sir.

Q. Who were those people if you recall?

A. Reese Thomas was right there at the steps as I started in. And I don't know who the other man was on the other side of the steps.

Q. Do you remember what his job was, can you identify him in any way?

A. He was a fireman, I would say he was a fireman.

Q. What, if anything, passed between you and anyone else there on Morris Avenue when you went down to the Superintendent's Office? Did you have any conversation with anybody?

A. Yes, sir.

Q. Whom did you talk with?

A. Mr. Thomas.

Q. Just tell these gentlemen in your own words as well as you can what was said by Mr. Thomas, Reese Thomas, and what was said by you on that occasion?

A. Well, he asked me what I was going to go upstairs for, and I said that's my job to go up there to see Mr. Kirchner. He says there's nobody up there but Kirchner; you are not to go.

Q. Who is Mr. Kirchner?

A. He was Superintendent of this Division.

Q. You went down there to see him on Company business?

A. Yes, sir.

Q. And Mr. Thomas said "You are not to go up there"?

A. That's right.

Q. Is that right?

A. That is right.

Q. Did he touch you in any way?

A. Yes, sir, he pushed me back a little bit.

Q. What did you do then?

A. I turned and went on back up towards 20th Street.

Q. Was there anybody else down there in that immediate vicinity besides Reese Thomas and this other fireman?

A. Across the street there was, oh, something like six or eight, and Charlie Schilleci is the one I remember, only one I remember across there.

Q. What is Charlie Schilleci?

A. He is a locomotive fireman.

Q. Was he there?

A. Across the street, yes, sir.

Q. About how long did you stay around on Morris Avenue on Monday morning, on that visit?

A. Five minutes I would say.

Q. When you left there, where did you go?

A. I went around to the drug store and called Mr. Kirchner over the telephone.

Q. Did you then some time later leave that downtown area?

A. I went home. That's what he told me to do, yes, sir.

Q. Did you visit any of the premises of the L&N Railroad at any other time during Monday, October 24?

A. Yes, sir.

Q. Where did you go and what time, about?

A. Well, it developed that there was some livestock and perishables on the Yard that in this flurry we didn't think about.

Mr. Taylor:
We object to that and move to exclude that. That is a volunteer statement, what developed. He is not testifying to facts.

The Court:
He asked where he went.

Mr. Gibson:
Yes, sir.

The Court:
I don't believe he asked that question. I sustain the objection and grant the motion.

Mr. Gibson:
We except.

Q. To what installation of the Railroad Company did you go?
A. We went to the office, I mean the gate over there at the Master Mechanic's Office to gain admission to go in and get the waybills.
Q. What do you mean by waybills? Explain that.
A. Each car is accompanied by a waybill that shows what the shipment contains, and where it goes. Freight rates and all of that is on it.
Q. That happened about what time, your best recollection about it?
A. Oh, before lunch, about 11:00 o'clock say.
Q. Was the gate open or closed when you got there?
A. The gate was closed.
Q. That is what is called the Master Mechanic's gate?
A. Yes, sir.

The Court:

Where is that located, at Boyles?

The Witness:

Yes, sir, at Boyles. I don't know the name of that street.

Q. Is that right on Vanderbilt or off of Vanderbilt Road?

A. It is off, about a block off of it.

Q. You said I think the gate was closed?

A. Yes, sir.

Q. Was anyone with you when you went to see about the waybills?

A. Assistant Trainmaster Mr. Woelde.

Q. How did you get down there?

A. In an automobile.

Q. After you turned off of Vanderbilt Road and started down that little street or road towards the Master Mechanic's gate did you see any other automobiles?

A. An automobile passed us.

Q. What kind of car was that?

A. I can't say, I don't know whether it was a Ford or Chevrolet, some light car.

Q. Where did that car go?

A. Stopped up there in front of the gate, at the entrance to the Yard.

Q. Headed which way?

A. Headed west.

Q. Headed towards the gate?

A. Parallel with the gate.

Q. Alongside of the gate?

A. Yes, sir.

Q. What did you and Mr. Woelde do then?

A. We drove up as far as we could and got out and made our business known, what we wanted.

Q. Was the automobile that was parked you said parallel with the gate parked in the road? Could you get in the gate with the automobile there?

A. I believe we got in the gate without the car being moved, yes, sir.

Q. But the gate was closed?

A. Yes, sir.

Q. Did you see anyone there that you recognized to be L&N employees?

A. Yes, sir.

Q. Name those men that you saw.

A. Reese Thomas was there and this fireman, Jody Johnson. Then there was in a car on the other side of the street a fellow named Hawkins.

Q. What was his job?

A. Fireman, locomotive fireman, and a fellow named Letchman.

Q. What was his job?

A. He is a fireman.

Q. Is he the man sitting over there third from the end on the bench?

A. Yes, sir.

Q. You told us that you made known to the people you saw there what your purpose and business was in being there?

A. Yes, sir.

Q. Now tell the jury the best you recall it in your own words what was said by you about that matter and what was said to you by anyone present.

A. Well, we made it known what we wanted. Mr. Thomas said we wasn't going in. We kept on talking, and directly Mr. Letchman came up and got in the conversation, and he was willing for us to go, and

finally we did go in there. The time element was about 30 minutes to get in there.

Q. What was said, if anything, to you about a time element, or about permission for you to go in your employee's property?

A. Said if we wasn't out in 30 minutes they would come in after us.

Q. Were they still out there when you came back?

A. Yes, sir.

Q. How long were you in there?

A. I think about 25 minutes.

Q. Did you then leave?

A. Yes, sir.

Q. Were they still there when you left?

A. Yes, sir.

Q. How many gates on the east side of the Railroad Company's property there were there in October, of 1955?

A. You mean by the highway, that is the east side of it?

Q. Yes.

A. There is two.

Q. What are those gates?

A. One is 39th Avenue, and the other one down at I believe that is 40th Avenue, or 41st Avenue.

Q. How many entrances did they have in all, regardless of whether there were gates there or not gates?

A. Two on Vanderbilt Road, and one around by the Master Mechanic's Office.

Q. That's the one you just told us about?

A. Yes, sir.

Q. Where you ran into Mr. Thomas and some other fireman. And you had already been, did you say you had already been to another one of those gates to go to work that morning?

A. Yes, sir.

Q. And you said there were some 15 or 18 men there?

A. Yes, sir, that's right.

Q. Did you go to any of the other gates of the Company which you have not mentioned up to now on Monday?

A. No.

Q. Did you visit any of the gates of the Boyles property on Tuesday, October 25?

A. I don't believe so.

Q. Did you go to Morris Avenue, the main office, Superintendent's Office, at any time on Tuesday the 25th?

A. No, sir.

Q. When was the next time you went around the Company's premises or porperty?

A. Just prior to going back to work.

Q. What day of the week was that, if you recall?

A. I think it was Wednesday.

Q. Mr. Mitchell, was Bruce Barnett down at the Master Mechanic's gate that Monday when you had that conversation?

A. Yes, sir.

Q. With Mr. Thomas?

A. Yes, sir.

Q. Was there anyone else that you recall?

A. Those five men I believe is all that was there.

Q. When those three men walked into the Yard Office on Sunday night, with two of them carrying sticks in their hands and said "We're on strike, everybody get out", or words to that effect, I will ask you to tell these twelve gentlemen whether or not you were afraid to stay there under those circumstances?

Mr. Taylor:
We object.

A. Yes, sir, I felt—

The Court:
I sustain the objection as to whether or not he was afraid. I think he can testify whether or not he was scared.

Q. Well, were you scared, Mr. Mitchell?
A. Yes, sir.

Mr. Pettus:
We object.

The Court:
Overruled.

Mr. Pettus:
We move to exclude that answer.

The Court:
All right, the first answer is excluded, gentlemen. The last answer is in.

Q. When you went to the Master Mechanic's gate on Monday and you were told that you and your Assistant, Mr. Woelde, could go in and check waybills, but if you were not out of there in 30 minutes they would come in and get you, were you scared then?

Mr. Taylor:
We object.

The Court:
Overruled.

Mr. Pettus:
Incompetent, irrelevant, and immaterial. It calls for a mental operation. We except.

Q. What is your answer, please, sir?

A. Well, I figured we could get in and out within 30 minutes, I wasn't too afraid on that deal.

Q. Were you scared to stay in there longer than 30 minutes?

Mr. Pettus:
We object to that.

A. Yes, sir.

The Court:
I sustain the objection.

Mr. Gibson:
That's all.

The Court:
Do you have any questions?

Mr. Pettus:
Yes, sir.

The Court:
It is recess time, gentlemen. We are going to have to recess until tomorrow morning at 9:00 o'clock.

Gentlemen, be back tomorrow morning at 9:00 o'clock. Remember the Court's admonition not to talk to anybody. Court is recessed.

(Whereupon, at 4:45 p. m. an adjournment was taken until 9:00 a. m., Tuesday, September 25, 1956.)

Tuesday, September 25, 1956,
at 9:00 A. M.

The Court:
All right gentlemen. Mr. Mitchell, take the stand.

BEN MITCHELL, the witness on the stand at the time of adjournment, having been previously duly sworn, resumed and testified further as follows:

Cross Examination.

Mr. Taylor:
Are you gentlemen through on direct examination?

Mr. Gibson:
Yes, sir.

By Mr. Taylor:
Q. This is Mr. Ben Mitchell who concluded your testimony on direct examination yesterday?
A. Yes, sir.
Q. Now, Mr. Mitchell, where are you now stationed?
A. Evansville, Indiana.
Q. How long have you been with the L&N?
A. Since 1925 or '26, March 25, 1926.
Q. Where did you go to work for the L&N?
A. Here at Birmingham.
Q. When were you transferred to Evansville, sir?
A. Last December.

Q. Now from 1926 until last December did you work all of your time for the L&N at Birmingham?

A. For a few years during the depression I was cut off.

Q. Other than the time you were cut off you worked all your experience with the L&N Railroad right here in Birmingham, is that correct?

A. Yes, sir.

Q. I believe you testified yesterday you started working as a switchman, is that correct?

A. Yes, sir, herder switchman.

Q. And you are now what?

A. Trainmaster.

Q. What are the intervening promotion steps between your starting point and the job you now hold?

A. From switching you go to foreman, and I worked as Assistant Yardmaster, then Assistant General Yardmaster, and Assistant Trainmaster and Trainmaster.

Q. You are now Trainmaster?

A. Yes, sir.

Q. When were you made Trainmaster?

A. It was January 1, 1950.

Q. Now, Mr. Mitchell, let me ask you this, if the success that you have had and the promotions you have received did not depend in large part on your procuring the co-operation of the men who worked under you and with you?

A. Partly, yes, sir.

Q. In other words, is it fair to say your advancement has been due at least in part to the help and co-operation of your fellow workers out there at the L&N?

A. That's right.

Q. Now are you a member of a Brotherhood or Labor Organization of any kind?

A. No, sir.

Q. Have you ever been?

A. I belonged to the Trainmen when I worked as switchman.

Q. When was the last time you belonged to the Trainmen?

A. It must have been about 1940 or '42, something like that.

Q. Did you belong to a Brotherhood while you were Trainmaster?

A. No, sir.

Q. You were not a dues paying member while you were Trainmaster at any time?

A. I don't think so.

Q. Isn't it a fact, Mr. Mitchell, that you belonged to a Brotherhood but did not attend the meetings after you got the position of Trainmaster?

A. It is not a fact.

Q. That is not true?

A. No, sir.

Q. All right, now I believe you testified yesterday that in 1955, in October, of 1955, that you worked from 8:00 in the morning until 5:00 in the afternoon, is that correct?

A. Yes, sir.

Q. Speak up so the Reporter can get your answer down.

A. Yes, sir.

Q. Was that true during the week ending October 23, 1955, or the week in which October 23, 1955 was one of the days?

A. Well, on Saturday afternoon I got off, and then Sunday afternoon I got off when conditions would permit.

Q. What is your normal work time on Saturday?

A. Around 8:00 o'clock in the morning until noon.
Q. Up until noon?
A. Yes.
Q. I believe that you said that there were more than one clerical people in your office, is that correct?
A. Yes, sir.
Q. What is the correct terminology of the place where you worked?
A. It is the Birmingham Boyles Terminal Yard Office.
Q. I mean the office you worked in?
A. General Yard Office.
Q. In the Yard Office?
A. Yes, sir.
Q. And what was your schedule of work on Sunday, October 23?
A. I went to work as usual Sunday morning.
Q. At 8:00 o'clock, is that right, sir?
A. About that, yes, sir.
Q. At what time did you leave?
A. Just a little before lunch.
Q. You left just a little before lunch?
A. I went back that afternoon.
Q. All right, we'll get to that in just a minute. Was that the end of your working day for Sunday, October 23, at noon?
A. It wasn't that day, no, sir. I went back.
Q. It was the week before, was it not?
A Yes, sir.
Q. Who told you to go back?
A. I don't know who the telephone call was received from about the trouble that was anticipated. That is the reason I went back.
Q. What time did you get this call?
A. Oh, it was I reckon around the early part of the afternoon.

Q. About 2:00 o'clock?

A. Something in that line, yes, sir.

Q. About 2:00 o'clock. Did any official of the L&N Railroad Company tell you to go back out there to the Yard Office?

A. No, sir.

Q. Did you tell any official of the L&N Railroad that you were going back to the Yard Office?

A. I don't believe I did, no, sir.

Q. You took your lunch, didn't you?

A. Yes, sir.

Q. You had already put in your day's work at that time out there, is that right?

A. That's right.

Q. Did you take your gun with you?

A. No, sir.

Q. Where did you leave your gun?

A. The gun is at the house, at my home.

Q. You have a permit to carry a pistol, do you not?

A. No, it has run out.

Q. Sir?

A. It has run out.

Q. You had a permit on October 23, 1955 to carry one, didn't you?

A. I don't believe I did, no, sir.

Q. You left the gun at home in any event when you went out there on Sunday, is that right?

A. That is right.

Q. Now, I believe you testified that on Sunday night at about 8:30 there were nine clerks on duty in the Yard Office at the time you were out there, is that correct? I'm speaking about Sunday night, October 23. To refresh your recollection I am speaking about the Sunday night when the work stoppage occurred?

A. Let's see.

Q. Just name those clerks that were on duty there at that time.

A. I don't know whether I can do that or not.

Q. Name all you can.

A. The chief clerk was J. H. Duncan. I believe my record clerk was Donald Mullins, I believe.

Q. What was that name again?

A. Donald Mullins, I believe he was.

Q. Donald Mullins. All right, sir.

A. I don't know who worked the bill desk, I can't say. There were three there. We had an operator and we had a chief caller and a call boy, and we had a Yard Dispatcher, but I don't remember who he was right now. I believe it was A. S. Johnson; and myself.

Q. All right, was John C. Smith there that night?

A. He was the call boy. I don't remember whether he was there or not.

Q. You don't say he was not there, do you?

A. I don't know whether he was or not.

Q. How about J. W. Scott?

A. I believe Scott was the call boy.

Q. You think that Scott was there as the call boy?

A. Yes.

Q. Now getting back just a moment, I believe you said that you left your office in the Yard Office at Boyles when you completed your normal day's work that Sunday about 12:00 o'clock, is that correct?

A. Around noon, yes, sir.

Q. Where did you go then?

A. Home.

Q. Did you go anywhere else?

A. I don't think so.

Q. Did you call anybody after you got home?

A. I don't think so.

Q. Did anybody call you?

A. I had this call along about 2:00 o'clock.

Q. I am talking of before you got that call did anybody call you?

A. No, sir, I don't think so.

Q. Did you talk to anybody with the L&N Railroad in person or over the telephone with the exception of this call that I will get to a little bit later?

A. I can't say that I did.

Q. Well, can you say that you did not?

A. I just don't know.

Q. You just don't know about that?

A. No.

Q. All right. Did you stay at home all Sunday afternoon?

A. Until I went back to the Yard Office.

Q. Until you went back to the Yard Office?

A. Yes.

Q. Was there anybody there with you?

A. My wife was there.

Q. Anybody else besides your wife and you?

A. I don't think so.

Q. Did anybody come in, come to see you?

A. I don't think they did, no, sir.

Q. All right, now you have testified—well, before we get to that, what time did you arrive at the Yard Office when you went back that afternoon?

A. Well, it was around 3:30 I guess.

Q. Around 3:30 in the afternoon?

A. Yes.

Q. Now did you call any official of the L&N Railroad then?

A. Yes, sir.

Q. Who did you call?

A. I think I called Mr. Kirchner. I told him what I had heard.

Q. What did you tell Mr. Kirchner?

A. That I had heard that they was going to have a strike and shut the plant down, I mean shut our Railroad down.

Q. Did you tell him what time this was supposed to happen?

A. Yes, I believe it was 6:00 o'clock when it was supposed to come off.

Q. Is that what you told him?

A. Yes, sir.

Q. What did he tell you?

A. To advise him later on.

Q. Is that all he told you?

A. I think so.

Q. Did he give you any later advice?

A. Well when—not until they walked out. Then I called him back again and tole him that they had walked out.

Q. When did you call him back again?

A. After I got home.

Q. After you got home. What time was that?

A. Around 9:30.

Q. Well, isn't it a fact, Mr. Mitchell, that Mr. Kirchner told you, "Well, if anything happens to close up the place and go home"?

A. No, sir.

Q. He didn't tell you anything like that?

A. No, sir.

Q. Well, did he tell you to leave somebody there to answer the telephone?

A. Who was there to leave, when everybody walked out?

Q. Did he tell you to get somebody there to watch the premises, to see that nothing happened to them?

Sir? Did he tell you that?

A. I don't think so.

Q. Did he tell you to post a guard around the premises inside of the L&N property?

A. No, sir.

Q. He didn't tell you that?

A. No, sir.

Q. Did he tell you to lock any gates?

A. No, sir.

Q. He didn't tell you to lock any gates?

A. No, sir.

Q. Did he tell you to close any gates?

A. No, sir.

Q. He didn't tell you that?

A. No, sir.

Q. He just said he would call you later, is that right?

A. I told him I would call him later, which I did.

Q. And he didn't give you any instructions about what to do in the event of a walkout?

A. No, sir.

Q. Now, who is your immediate superior, Mr. Kirchner?

A. Mr. Parsons, Assistant Superintendent first, and then Mr. Kirchner.

Q. Mr. Parsons was your immediate superior, is that correct?

A. Yes, sir.

Q. Now, he is under Mr. Kirchner, I believe you stated, as Assistant Superintendent?

A. Yes, sir.

Q. Did you talk to Mr. Parsons that Sunday afternoon?

A. Not Sunday afternoon. I did Sunday night.

Q. What time did you talk to him Sunday night?

A. After I talked to Mr. Kirchner, shortly after 9:30.

Q. What did you tell Mr. Parsons?

A. About the same thing I told Mr. Kirchner.

Q. What did Mr. Parsons tell you?

A. Well, I don't remember. Let's see, I told him what had happened, and I believe he told me to just stay home and see what they do tomorrow, I believe that's the way it was.

Q. All right, now Mr. Mr. Mitchell, is this conversation that you tell this jury you had with Mr. Parsons that Sunday night, is that the first time you discussed this work stoppage with Mr. Parsons?

A. I am pretty sure it was, because I tried to call him prior to that, but couldn't. I think Mr. Kirchner is the only man I told about it.

Q. Well, you say you are pretty sure that it is?

A. Yes, sir.

Q. I take it by that you are not positive that it is, and that you could have talked to him earlier, is that right?

A. I don't believe I did.

Q. You could have talked to him Saturday before the Sunday walkout, couldn't you?

A. I did talk to him Saturday, yes, sir.

Q. Did you talk to him about the walkout?

A. No, I didn't know it.

Q. You didn't mention it?

A. No, sir.

Q. You didn't mention the possibility of it, is that right?

A. No, sir.

Q. All right, now, I believe you testified on yesterday that three men came into your office?

A. That's right.

Q. While you were there?
A. That's right.
Q. What time was this?
A. About 8:45 I imagine, 8:30 or 45, something like that.
Q. About 8:45?
A. Yes, sir.
Q. You had been there at the office for some five hours forty-five minutes, or five hours before they came in, is that right?
A. Yes, sir.
Q. Now these clerks that you mentioned, D. E. Mullins and the rest of them, the, were there at that time, were they not?
A. Yes, sir, they work from 3:00 to 11:00.
Q. All right, now, I would like to make sure that you have this time right, so if there is any doubt about it in your mind I wish you would tell us?
A. All right.
Q. You said 8:45. Is that correct?
A. Between 8:30 and 8:45.
Q. Between 8:30 and 8:45?
A. Yes, sir.
Q. And you have had time to think about that time, and so far as your best judgment is concerned that is the time, is that correct?
A. Yes, sir.
Q. Now, when did you first see the three men that you say came in there at that time, Mr. Mitchell?
A. They were inside of the building when I first saw them. I didn't see them come in the door.
Q. Now—
A. Because I was using the telephone.
Q. Now, I believe you told us yesterday afternoon, I believe, that, or told your lawyer that he asked you

the question, that these three men were dressed in street clothes, that's right, isn't it?

A. I think so, yes, sir.

Q. And who were the three men that you claim you saw in there that night?

A. Fireman Baum and Fireman Davis and Fireman Myrick.

Q. Now, what are the initials of this gentleman named Myrick?

A. I don't know.

Q. Well, how many Myricks have you got working for the L&N a the Boyles Shop?

A. Well, we have an engineer, and he has a son that is a clerk. And this Myrick I don't think is even kin to those two. We have three.

Q. Well, you have three Myricks out there?

A. Yes, sir.

Q. Which one of these Myricks was it?

A. It was Fireman Myrick.

Q. You don't know his initials?

A. No, sir.

Q. How long has he been working for the L&N?

A. I don't know that.

Q. Now, do you know what job Myrick was working?

A. No, sir.

Q. Do you know what job Davis was working?

A. No, sir.

Q. Now, you testified I believe that Mr. Mullins, D. E. Mullins was in there when these three men came in, is that right?

A. I think he was the record clerk.

Q. The record clerk?

A. Yes, sir.

Q. So far as you know Mr. John C. Smith was there also?

A. No, I think Scott was the call boy that night.

Q. You think Scott was?

A. Yes, sir.

Q. J. W. Scott?

A. Yes, sir.

Q. That is J. W. Scott?

A. I believe it is, yes, sir.

Q. Now, where were you standing in relation to, or sitting if that be the case, with relation to Mr. Scott and Mr. Mullins?

A. Mr. Scott and who?

Q. Mr. Mullins, D. E. Mullins.

A. Well, like that is the door to the entrance to the office (indicating).

Q. Are you referring to this window behind the jury box?

A. Yes, sir, that would be the door. Then your desk where the chief clerk is I imagine is about 25 feet from the door.

Q. Who was seated there?

A. Sir?

Q. Who was seated there.

A. Mr. Duncan was on the side facing the door and I was on the side standing with my back to the wall,—to the door.

Q. Were you right by the desk?

A. Yes, sir.

Q. Where was Mr. Mullins seated or standing?

A. Just inside of the door there is a long table over here (indicating), and that's where the record clerk works.

Q. In relation to the counsel table here, that long table would be where the jury box is?

A. About that, yes, sir.

Q. Now, you say the three men came in the door represented by the window behind the jury, is that correct?

A. No, sir, they was in the building when I saw them.

Q. Where were they when you saw them?

A. They were standing on this side, and Davis, two of them were standing on this side, and Davis on the far side of the opening of the door.

Q. All right, and who did the talking?

A. Mr. Baum.

Q. How close was he standing to where Mr. Mullins was seated when he made this remark you claim he made?

A. Oh, I imagine within 10 feet.

Q. Within 10 feet?

A. Something like that, or 15.

Q. How far was he away from you?

A. About 20 or 25.

Q. About 20 feet from you and about 10 feet from Mr. Mullins, is that right?

A. I judge that Mr. Mullins was the record clerk.

Q. I understand. I am not making a point of that.

A. All right.

Q. Now, was that room lighted?

A. Yes, sir.

Q. Was there anything going on in there except normal business activities?

A. No, just regular work.

Q. Is there any reason that you know of why Mr. Mullins could not have heard everything that you heard?

A. No. He could have.

Q. And he could see everything that you could see, is that correct?

A. I imagine so.

Q. And all of the other yard clerks in there could see and hear everything that you heard and saw so far as you know, couldn't they?

A. Well now, them three that worked the bill desk, that was a little further back.

Q. All right, with the exception of anybody who had their back turned to these fellows, everybody else in the room was in a position to see and hear the same things that you say you saw and heard?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. There were no partitions separating that room, was there, Mr. Mitchell?

A. Oh, yes, yes, sir.

Q. All right, where are the partitions?

A. Well, the room that the operator works in, there is a partition, and then there is a partition in there where the chief caller and caller works. And there is another little room where the Yard Dispatcher works.

Q. All right now we have located the door, the table where Mr. Mullins was seated, the table where the chief clerk was seated, and you say you were alongside of that table, is that correct?

A. Standing up there.

Q. Now, there is no partition between that table where you and the chief clerk were, and the table where Mr. Mullins was seated, and the door where these men came in, is there?

A. No, sir.

Q. Now, just what time did these three men come in?

A. Well, around 8:30.

Q. You know as a matter of fact, don't you, Mr. Mitchell, that Myrick was working on Job 20 that night?

A. No, sir, I didn't know where he was working.

Q. Are you familiar with Job 20?

A. Yes, sir. That is South Train, a South Train Yard Job.

Q. South Train Yard Job?

A. Yes, sir.

Q. How far is the South Train Yard located from your office in the Yards?

A. Well, it is I would say about three city blocks.

Q. About three city blocks?

A. Yes, sir.

Q. What time did Job 20 go to work?

A. I believe that is the job that went to work at 2:45.

Q. What time did it get off?

A. 10:45.

Q. 10:45 p. m.?

A. Yes, sir.

Q. You know, don't you, that Davis was working the hostler's job at the roundhouse that Sunday night, do you not?

A. I don't know where he was working, no, sir.

Q. You didn't know where he was working?

A. No, sir.

Q. How far is the job at the roundhouse located from the Yard Office? About a half a mile, isn't it?

A. Every bit of it, yes, sir.

Q. Every bit of it?

A. Yes, sir.

Q. That job goes to work at 3:00 o'clock, doesn't it, in the afternoon?

A. I think it does, yes, sir.

Q. And gets off at what time?

A. 3:00 to 11:00.

Q. 11:00 o'clock p. m.?

A. If he was working the hostler's job, that's the time.

Q. If he was working the hostler's job, that is what time he got off?

A. Yes, sir.

Q. Now then, if Myrick was working Job 20 and he worked up until it concluded, he couldn't have been in the Yard Office where you say he was, could he?

A. He didn't work until he completed the shift.

Q. Well, I am asking you if he did?

A. Yes, sir.

Q. Will you please answer the question?

A. Oh, yes.

Q. And if Davis worked his hostler's job until it concluded at 11:00 p. m. he could not be in the Yard Office either, could he?

A. No.

Q. Are you positive about the identification that you have made of these three men?

A. I think so.

Q. You think so?

A. I am sure I did, yes, sir.

Q. You are absolutely certain?

A. Yes, sir.

Q. Now, if you are mistaken as to the identity of one of them, you could be mistaken as to the identity of all of them, couldn't you?

A. Yes, but I remember them.

Q. Sir?

A. I remember them.

Q. Well, if you say Myrick was there and you found out he was not there, you are mistaken, were you not?

A. I imagine.
Q. Sir?
A. Yes, sir.
Q. If you are mistaken about one you could be mistaken about all three of them, couldn't you?

Mr. Simpson:
May it please the Court, we don't like to—

The Court:
I sustain the objection to that.

Mr. Simpson:
That is pure argument.

Q. Now, Mr. Mitchell, you are known out there at the L&N, and have been for a good many years to be a very heavy drinker of alcoholic beverage, are you not?
A. No, sir.
Q. Did you have anything to drink on this Sunday afternoon?
A. No, sir.
Q. Not a drop?
A. No, sir.
Q. You didn't drink anything at home after you got off from work?
A. No, sir.
Q. You didn't have anything to drink after you came back out to the Yard?
A. No, sir.
Q. Is that correct?
A. That's right.
Q. Now, Mr. Mitchell, you didn't see anybody in that Yard Office with sticks in their hands Sunday night, did you?

A. Yes, sir.

Q. And are you telling this jury that H. M. Baum was one of those men?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Why, you know he was not in there, don't you, Mr. Mitchell?

A. No, sir.

Q. Now, Mr. Mitchell, it has already been established that, by questions, that you are Trainmaster I believe. Is that the proper terminology?

A. Yes, sir.

Q. In Louisville, Kentucky?

A. Evansville, Indiana.

Q. Evansville, Indiana, excuse me?

A. Yes, sir.

Q. Now, you don't establish seniority in that type of position with the Railroad, do you?

A. No, sir.

Q. And you have no contract of employment, either individually or through an organization with the L&N Railroad, do you?

A. No.

Q. Is your answer "No"?

A. No, sir, I don't have any contract.

Q. Isn't it true that the Railroad could terminate your services any time they saw fit, Mr. Mitchell?

A. Yes.

Q. Now, you are most anxious, are you not, Mr. Mitchell, to come down here from Evansville and give to this Court and jury the type of testimony that the L&N Railroad expects you to give, aren't you?

A. Repeat that, please, sir.

Q. I say you are mighty anxious to come down here and tell this Court and jury, and give this Court and jury the type of testimony that the L&N Railroad expects you to give, are you not?

A. No, sir.

Q. You are not anxious to do that?

A. No, sir.

Q. Are you being paid to testify in this case?

A. I get my salary, if that's what you mean.

Q. Your expenses down here are being paid, are they not?

A. No, I am staying at home.

Q. Sir?

A. I am staying at my son's home.

Q. You are not incurring any other expense that you would not otherwise incur by coming down here then, are you?

A. No, sir.

Q. You are not losing any time from your work on account of it, are you?

A. No, sir.

Q. You are being paid just like you were there performing duties?

A. Yes, sir.

Q. Is that right?

A. That's right.

Q. Now, I believe you stated that after the three men left the Yard Office you told the clerks "Wait until I get my lunch, and I'll go with you", is that correct?

A. I told Mr. Duncan that. The rest of them were gone.

Q. The rest of them had already gone?

A. Yes, sir.

Q. What time did you leave the Yard Office?

A. About 8:45.

Q. Was that immediately after these men came in?

A. I imagine about four or five minutes after they came in, maybe three.

Q. About four or five minutes?

A. Yes, sir.

Q. Did I understand you to say a moment ago—I am trying to get it straight in my mind—that you called Mr. Kirchner before you left the Yard Office?

A. No, sir, I waited until I got home.

Q. Was there anybody in the Yard Office when you left?

A. No, sir, I was the last one out.

Q. You were the last one out?

A. Yes, sir.

Q. Now, there wasn't any occasion for you to call Mr. Kirchner, was there, because he already knew there was going to be a walkout, didn't he?

A. I couldn't answer that. I don't know whether he knew it or not.

Q. Were you the senior L&N official at the Boyles Yard that Sunday night?

A. Yes, sir.

Q. You were the man in charge, so to speak?

A. Yes, sir.

Q. You were the man that anybody out there would look to for instructions, so far as the L&N Railroad is concerned?

A. Yes, sir.

Q. You are telling this jury that you, the senior official on duty, saw a walkout coming, saw the men leaving, and you got up, picked up your lunch pail, put on your hat and walked out, without taking any steps to safeguard the Company's property, or call your superior, and tell him what was going on, or anything else? Is that what you tell this jury?

A. That's what happened. But the reason I did walk out was because I was told to "Get out."

Q. You took no steps to notify the high officials what was happening?

A. Not until I got home.

Q. Did you have a standard operative procedure at this time about what to do in case of a walkout?

A. No.

Q. Hadn't Mr. Kirchner or Mr. Parsons ever told you what to do in case there was a walkout without advance notice?

A. No, sir.

Q. They never have told you that?

A. No, sir.

Q. You didn't take it upon yourself to call them and advise them before you left the premises, is that correct?

A. I didn't have time to.

Q. You didn't take time to, is that correct?

A. Well, that may be it.

Q. Mr. Mitchell, did you turn out the lights in the Yard Office?

A. No, sir.

Q. Did you leave them burning?

A. No, sir.

Q. Who turned them out, if you know?

A. I couldn't answer that. They were turned out while I went upstairs to get my lunch. I wasn't in there when they turned them out.

Q. Did all of the lights in the whole Yard go off at the same time?

A. Well, all of the lights in the Yard Office went off at the same time.

Q. Were there any other lights on then?

A. Yes, the arc lights out in the Yard were on at that time I am sure.

Q. Did they stay on?

A. No, they went out before we got to the powerhouse, or about the time we got to the powerhouse.

Q. Where is the light switch that controls the lights in the Yard Office?

A. Right behind the chief clerk's desk.

Q. Are there any other switches you know anything about?

A. No, there is just the one master switch there.

Q. Who was there in the room when you went upstairs to get your lunch?

A. Upstairs, in that room?

Q. Who was in the room where the light switch was when you went up to get your lunch?

A. I think everybody had gone or was in the midst of leaving except Mr. Duncan—

Q. Except Mr. Duncan?

A. No, no, there was two or three more walking around.

Q. When did you say the lights went out?

A. Sir?

Q. When did you say the lights went out?

A. When I went upstairs after my lunch.

Q. You had to come back downstairs?

A. Yes, sir.

Q. In the dark, is that right?

A. That's right. Well, I had a flashlight.

Q. Now, Mr. Mitchell, you testified on your direct examination that the first thing you knew about a work stoppage was a telephone call that you received on Sunday, I believe, is that correct?

A. That's right.

Q. Now, I believe you told me a few minutes ago, and correct me if I am wrong, that you received this telephone call about 2:00 p. m.?

A. In the neighborhood of that, yes, s.

Q. Did you receive it after you finished your normal morning's work at the Yard Office?

A. I left the Yard Office around noon.

Q. All right, sir. You received the telephone call at home, is that right?

A. That's right.

Q. Did you?

A. That's right.

Q. Now, will you please tell the gentlemen of the jury again, please, as well as you can exactly what mysterious caller told you over the telephone?

A. Well, he just said that they were going to have a meeting, the firemen were going to have a meeting and set the hour of the walkout. He never did identify himself, he just hung up. I don't know who it was. He never did identify himself. I never did find out who it was.

Q. Is that all he told you?

A. About that, yes, sir.

Q. Well now, you told us yesterday that this mysterious caller told you what time there was going to be a walkout, didn't you?

A. He said about 4:00 o'clock, or 6:00, they were going to have this meeting.

Q. He said they were going to have a meeting at 4:00 o'clock?

A. No, said they were going to have a meeting, going to plan a walk out at 4:00 o'clock, meeting at 4:00—ro, they were going to have a meeting at 4:00 o'clock, and going to walk out at 6:00.

Q. Didn't you testify here yesterday, Mr. Mitchell, that this caller told you there was going to be strike at 4:00 o'clock?

A. I believe I did. That's the reason I went back earlier.

Q. Mr. Mitchell, is your testimony now, I want to get it straight here, that this mysterious caller told you that there would be a strike at 4:00 o'clock?

A. Yes, sir.

Q. And that's the reason you went back there at 3:30, is that right?

A. Yes, that's right.

Q. And the caller didn't tell you anything about any meeting?

A. He also said they was going to have one, or had one.

Q. He said that they were going to have one or had had one, is that right?

A. Let me think a minute. The best I can remember he said there was going to be a meeting, or had been one.

Q. You are pretty confused about this telephone call, Mr. Mitchell. Did you ever get such a telephone call?

A. Yes, sir.

Q. Who was the first person you told about this call?

A. I don't remember that.

Q. You don't remember that?

A. No.

Q. You don't?

A. I believe Mr. Kirchner is the first one I told about it.

Q. You believe Mr. Kirchner is the first one you told about it?

A. Yes, sir.

Q. What did you tell him about it?

A. Just what I heard.

Q. When did you tell him?

A. Shortly right after I received the call.

Q. What do you mean by "shortly"?
A. A few minutes.
Q. Where did you find Mr. Kirchner?
A. At home, at his home.
Q. At his home?
A. Yes.
Q. And did he give you any instructions then?
A. He just told me to advise him.
Q. He told you to advise him?
A. Yes.
Q. Did he tell you to go back to the Yard Office?
A. No, sir, I told him I was going.
Q. You told him you were going back?
A. Yes, sir.
Q. Now you are so confused about what this man told you over the telephone, Mr. Mitchell, is there any doubt about what date he called you?
A. No. He called me the day that they actually came out?
Q. He called you the day they actually came out?
A. Yes, sir.
Q. Are you positive that it could not have been Saturday or Friday before that?
A. No.
Q. Are you certain it could not have been?
A. It was Sunday.
Q. You say it could not have been?
A. It was Sunday.
Q. You say it was, or you don't think it was?
A. It was Sunday.
Q. You think it was Sunday?
A. Yes, sir.
Q. Did you recognize the voice of the man who called you?
A. No, sir.

Q. Had you ever heard it before?
A. I might have, I don't know.
Q. Have you ever heard it since?
A. I couldn't say because I don't know who it was.
Q. I am asking you if you recognized the voice?
A. No.
Q. Not if you know who it was?
A. No.
Q. As having heard it before?
A. I can't say that I did.
Q. Now, Mr. Mitchell, I believe you told me that the mysterious caller didn't say anything about a meeting to be held? Or you don't remember what he said about that, is that correct?
A. No, sir, I can't say that I remember exactly. He either said there was going to be or there had been one.
Q. You say he said he said there was going to be or there had been a meeting?
A. Or was going to be, yes, sir.
Q. All right now let's get back just a moment. I believe you stated you left the Yard Office at 8:45?
A. That's right.
Q. Sunday night?
A. About that, yes, sir.
Q. Who were you with?
A. I was walking parallel with James Duncan, J. H. Duncan.
Q. Walking parallel with J. H. Duncan?
A. Yes, sir.
Q. I believe you told us he was chief clerk?
A. Yes, sir.
Q. Where was Mr. Mullins?
A Everybody else was ahead of us. We were the last two out.

Q. I am asking you where they were, if you know?

A. I don't know where he was.

Q. If you don't know, just say so.

A. All right.

Q. Where were these three men that you claim you saw in the Yard Office?

A. Just a few feet ahead of us.

Q. How many feet?

A. Oh, just two or three. We was all walking along in a group.

Q. Can you tell the jury how Mr. Myrick was dressed?

A. No, sir.

Q. Can you tell the jury how Mr. Davis was dressed?

A. Just regular street clothes. I don't know what color they were.

Q. You say all three of them were in regular street clothes?

A. Yes, sir.

Q. Well, you don't know whether they had on a coat and tie, do you?

A. No, sir.

Q. You don't know whether they had on a sport shirt or not, do you?

A. No, sir.

Q. You don't know whether they were wearing a hat or not, do you?

A. I'm pretty sure everybody had a hat on.

Q. You are pretty sure everybody had a hat on?

A. Yes, sir.

Q. It wasn't a cap, it was a hat? All right, how long do you think it took you to get out of the Yard Office, I mean out of the gate, off the premises?

A. Probably 10 minutes.

Q. Probably 10 minutes?

A. About.

Q. The group that you have just described all walked out together?

A. Yes, sir.

Q. What did you do when you got to the gate?

A. Proceeded right on home.

Q. Was your car parked down there?

A. No, I walked down.

Q. You walked down there?

A. Yes, sir.

Q. You live very close to the Boyles Yard?

A. About four blocks.

Q. About four blocks?

A. Yes, sir.

Q. Did you make any stops on the way?

A. No, sir.

Q. You didn't go by Rex's Barbecue?

A. No, sir.

Q. Who did you see around the gate when you came out?

A. I don't know that, who was there in that crowd that went out with us. There was several out there, I am pretty sure.

Q. About how many?

A. Oh, 8 or 10 I would say.

Q. All right. What time did you get home that night?

A. About 9:15 or 20.

Q. Was there anybody there except your wife?

A. No, sir.

Q. Did you have any company that evening?

A. No, sir.

Q. Now then, I believe you told us that you made some telephone calls after you got home?

A. That's right.

Q. Who was the first man you called?
A. Mr. Kirchner.
Q. What did you tell him?
A. I told him I was home, and the reason I was home.
Q. What did he say?
A. I don't remember.
Q. Do you know what he said?
A. Sir?
Q. Do you know what he said.
A. No, sir, I don't know. I'm just trying to think. I don't know what he said to me now.
Q. Did you call Mr. Parsons?
A. Yes, sir, I called Mr. Parsons.
Q. What did you tell him?
A. I told him about the same thing, and he said "I'll see you in the morning."
Q. Was he surprised?
A. Apparently he was, yes, sir.
Q. He didn't give you any instructions though, did he?
A. Not that night, no, sir.
Q. Did you have anything to drink that night at home?
A. No, sir.
Q. What time did you get up on Monday morning?
A. About 6:00 o'clock I imagine.
Q. And I assume you went through the normal routine, had your breakfast at home?
A. That's right.
Q. What time did you leave home?
A. Around 7:30 I would say.
Q. Walking or riding?
A. Walking.
Q. Where did you go?

A. Tried to—I mean I went down the pike to look the situation over.

Q. I didn't hear what you said.

A. I went down to the gate, to the entrance to the Yard.

Q. What gate did you go to?

A. That one on Vanderbilt Road, off of 39th Street I believe it is.

Q. Let's draw a diagram here. I can't even draw a straight line, but if you will assume that this is Vanderbilt Avenue, and this is Rex's Barbecue, the Boyles Shops are located in this area over here, are they not?

A. Yes, sir, the roundhouse is there.

Q. Will you indicate to me, please, sir, so I will get it exactly right, the relative locations of all the gates and entrances in the Boyles Yard? Would you mind taking a piece of chalk and indicating that?

A. Well, you have got this—

Q. Well, you put Rex's where it belongs. I might have put it in the wrong place.

A. Well, there's a gate down here (indicating).

Q. It faces this way, doesn't it?

A. No, sir.

Q. Oh, I am sorry, you are right.

A. Away up towards town.

Q. Excuse me. I want to get this identified.

A. All right.

Q. Which gate is this?

A. The roundhouse gate. Its not a gate, it has just a bridge there.

Q. Will you tell us the next entrance, please, sir?

A. Well, the Master Mechanic's Office would be along here (indicating).

Q. Along about here?

A. Yes, sir.
Q. All right.
A. That is about a block off of the highway now.
Q. Well, let's change that then.
A. All right.
Q. Is there a road leading in something like this (indicating)?
A. Yes, sir.
Q. And the Master Mechanic's gate is about there?
A. Yes, sir.
Q. Are there any others?
A. Well, there is one here at the powerhouse.
Q. At the powerhouse?
A. 39th Street.
Q. Is that right on Vanderbilt Road?
A. That is right on the road.
Q. That is the powerhouse gate?
A. Yes, sir.
Q. All right, sir. You may resume your seat.
A. All right.
Q. Now, excuse me if this is repetition.
A. I beg your pardon?
Q. Will you tell me again so I can recall it to my mind where you went when you left home the first thing Monday morning?
A. When I left home Monday morning?
Q. Yes, sir.
A. I came down to 39th Street, the powerhouse gate there.
Q. You came to the powerhouse gate, is that correct?
A. Yes, sir.
Q. Were you walking?
A. Yes, sir.
Q. Who did you see at the powerhouse gate?

A. I don't—I can't call them. There was about 18 or 20 of them down there I guess.

Q. Can you tell us the names of any you saw?

A. Yes, Reese Thomas was there.

Q. You saw Reese Thomas at the powerhouse?

A. Yes, sir.

Q. What time was this?

A. About 8:00 o'clock.

Q. About 8:00 o'clock?

A. Yes, sir, a quarter to 8:00 I guess, 7:45 or 8:00 o'clock.

Q. Excuse me. You say 7:45 or 8:00?

A. About that.

Q. All right.

A. I was in the Birmingham Office at 8:30, I remember that.

Q. We will get to that in just a minute. Your judgment is that it was between 7:45 and 8:00?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. How long did you stay there at the powerhouse gate?

A. About a minute or two.

Q. Just a minute or two?

A. And caught the bus coming by, caught the bus and went to town.

Q. Did you see anybody there but Reese Thomas?

A. Yes, there was several of them down there, 18 or 20, but I don't remember who was there other than Reese.

Q. You don't remember a single name, but Reese Thomas being there?

A. He's the one I had the conversation with.

Q. How long have you been working with those people out there at Boyles?

A. I have known Mr. Thomas I reckon 25 years.

Q. Did you recognize any of the other men as to which craft they belonged to?

A. No, I don't remember the rest of them, who was out there. There was some switchmen and some firemen, and different ones.

Q. Well, you have been working with those firemen and switchmen out there for over 20 years, haven't you?

A. Yes, sir.

Q. And you tell us that you can't name but one single man, except a man named Reese Thomas out there?

A. That's the only one I remember.

Q. That's the only one that the L&N wanted you to remember, isn't that right?

The Court:

I sustain the objection.

Mr. Simpson:

We don't object, Your Honor, but I think it is most improper.

The Court:

I sustain the objection to that question.

Mr. Taylor:

All right.

Q. Now, how long did you stay there Mr. Mitchell?

A. Just a minute or two, and caught the bus.

Q. Just a minute or two?

A. Yes.

Q. Is it your recollection that it couldn't have been over two minutes?

A. I imagine that, maybe three.

Q. All right, I believe you said you then caught a bus, is that correct?

A. Yes, sir.

Q. So that would have been that you caught that bus between 8:45 and 8:50, would it not, or something like that?

A. Something on that line, yes, sir.

Q. Not later than 10 minutes to 8:00?

A. About that.

Q. Where did you ride that bus to?

A. First Avenue and 20th Street.

Q. Was that a trolley bus?

A. Yes, sir.

Q. Of course, you saw no railroad employees on the trolley bus?

A. I don't think so.

Q. What time did you arrive at First Avenue and 19th Street?

A. About 8:20.

Q. 8:20?

A. Or 25.

Q. All right now, where did you go when you got off the bus?

A. I went, or I tried to go to the Superintendent's Office on Morris Avenue.

Q. Well, you walked down there, didn't you?

A. Yes, sir.

Q. Nobody stopped you?

A. No.

Q. Well, you walked down there then?

A. That's right.

Q. And you say this was at 8:20?
A. I got to the office about 8:20.
Q. Got to the office about 8:20?
A. Yes.
Q. Now, Mr. Mitchell, who is the first person you told about seeing Reese Thomas at the powerhouse at 7:45 on Monday morning, October 24?
A. I don't know. I can't say who I told, I don't remember.
Q. Did you tell anybody within one day after you saw him?
A. Oh, yes, I outlined the activities of the day to Mr. Kirchner that day.
Q. Well, you made an affidavit about what you saw that morning, didn't you?
A. Yes, sir.
Q. Well, you didn't say anything in that affidavit about seeing Reese Thomas at the powerhouse gate, did you?
A. I think so.
Q. If it is not in your affidavit you didn't tell him that, did you?
A. I think it is in there.
Q. All right, we will look at it in just a minute and see.
A. All right.
Q. Who did you see when you got to the Superintendent's Office?
A. Reese Thomas was there at the steps, and somebody on the other side; I don't know who he was.
Q. Are you telling this jury that you left Reese Thomas at the powerhouse gate and got on the trolley bus that was then coming down the road, rode straight to the Superintendent's Office, and that when you got there Reese Thomas was there waiting for you?

A. Yes, sir.
Q. How was he dressed?
A. He just had on regular street clothes.
Q. Did he have on a coat?
A. I don't think so.
Q. Did he have on a jacket?
A. I don't think so.
Q Did he have on a shirt?
A. Yes, sir.
Q. What color was it?
A. I couldn't tell you.
Q. A blue shirt, wasn't it?
A. I don't know.
Q. He didn't have on a jacket, did he?
A. I don't think he did.
Q. You don't think he had on a jacket?
A. No, sir.
Q. Do you know Charlie Schilleci?
A. Yes, sir.
Q. Was he down there at the Superintendent's Office?
A. He was across the street on Morris Avenue.
Q. You never saw him anywhere except across the street?
A. That's right.
Q. Do you know Joe Saab?
A. Yes.
Q. Was he down there?
A. I couldn't say, I don't remember.
Q. You didn't see him? You don't know, or do you say he was not there?
A. I don't know.
Q. How big a man is Joe Saab?
A. About my size.
Q. About your build around the middle?

A. Yes.

Q. How big a man is Charlie Schilleci?

A. He is a good bit smaller than I am.

Q. He is smaller?

A. Yes, sir.

Q. How tall are you?

A. 5 feet 11.

Q. Who did you see running around the Superintendent's door besides you say you saw Reese Thomas?

A. Somebody on the other side of the door, but I don't remember who it was.

Q. You don't remember who it was?

A. No, sir.

Q. Was he a railroad employee?

A. I don't remember who he was.

Q. You don't know whether he was a railroad employee or not?

A. No. sir.

Q. Dd you see Mr. Camp down there?

A. Who?

Q. Mr. Camp.

A. I don't believe I saw him that morning, no.

Q. Where is his office located?

A. Second door down from the entrance to the building.

Q. Right on the street level, isn't it?

A. Yes, sir.

Q. You tell us now then that when you got down to the Superintendent's Office 8:30 a. m., Monday morning, the only man you saw that you could recognize was Reese Thomas, is that right?

A. Schilleci across the street.

Q. And Schilleci across the street?

A. That's right.

Q. What did you see Schilleci doing?

A. Standing over there on that side.

Q. Did you see him walk about, talking to anybody?

A. I can't say whether I did or not.

Q. How long did you stay at the Superintendent's Office?

A. Oh, about a minute or two.

Q. Just a minute or two?

A. Yes.

Q. Where did you go then?

A. I went back up to the drug store.

Q. Where was that?

A. Lane's, there on First and 20th.

Q. Did you get some refreshments in there?

A. No, sir.

Q. What did you do there?

A. I called Mr. Kirchner over the telephone.

Q. How long did you stay there in the drug store?

A. Just a few minutes; I don't know.

Q. Just a few minutes?

A. Yes.

Q. Well, where did you go when you left there?

A. I went on home.

Q. Went to your home?

A. Yes, sir.

Q. How did you get there, by the trolley bus?

A. Yes, sir.

Q. What is your judgment as to the time you arrived home?

A. I imagine about 9:30.

Q. Mr. Mitchell, before I get away from this line of questioning, you know, do you not, that you did not see Reese Thomas at any powerhouse gate at 7:45 Monday morning?

A. I saw him.

Q. You know he couldn't have beat you down there to the Passenger Station and been waiting for you in front of the Superintendent's Office, don't you?

A. No, sir, I don't know that.

Q. How far is it from the Boyles Yard to the Passenger Station down here on Morris Avenue?

A. About 4-½ miles.

Q. Sir?

A. About 4-½ miles.

Q. About 4-½ miles?

A. Yes, sir.

Q. You have to come right through town, don't you, to get there?

A. Yes.

Q. After you have thought about it, don't you know you didn't see Reese Thomas that morning until you saw him at the Superintendent's Office?

A. No, I saw him.

Q. He is the only one you can tell us you saw at the powerhouse gate now?

A. The only man I remember, yes, sir.

Q. The only man you remember?

A. Yes, sir.

Q. You say you never saw Mr. Schilleci over by the Superintendent's door while you were down there?

A. I don't think so, no, sir.

Q. If Mr Camp says he was there, Mr. Camp would be telling the truth, wouldn't he?

The Court:

I sustain the objection.

Q. How long have you known Charlie Schilleci?

A. Oh, 8 or 9 or 10 years, something like that. He has been firing.

Q. Have you worked with him?

A. Sir?

Q. Have you worked with him during that period of time?

A. I have as Assistant Yardmaster. I have not switched any cars with him, as him being a fireman, I don't think.

Q. Now, I want to ask you this question, Mr. Mitchell, if it is not a fact that shortly after this walkout occurred, if you didn't call Charlie Schilleci and tell him that if he would come to your office that you would tell him how to get out of this trouble?

A. Did I call him and tell him that?

Q. Yes, sir.

A. No, sir.

Q. Did you have a conversation with him then in which you told him that or that in substance?

A. No, sir.

Q. Did you ever talk to Charlie Schilleci about this situation?

A. No, sir.

Q. Charlie Schilleci is not a Defendant in this lawsuit, is he?

A. I couldn't tell you, I don't know.

Q. Now yesterday when the lawyer was asking you questions didn't you tell him that the first time, that you first saw Reese Thomas at the Master Mechanic's gate on Monday morning?

A. No, it was the powerhouse gate. Now later on he was at the Master Mechanic's gate.

Q. Yes, I realize that, but I am asking you if you didn't tell him yesterday that the first time you saw Reese Thomas Monday morning you saw him at the Master Mechanic's gate?

A. I don't think so.

Q. If you did testify to that yesterday, that was a mistake?

A. Yes, sir. I saw him at the powerhouse gate the first time, where I caught the bus.

Q. You are sure now that you saw him at the powerhouse gate the first time?

A. Yes, sir.

Q. Now, Mr. Mitchell, you, of course, knew about the abolition of the hostler helpers jobs, didn't you?

A. Yes, sir.

Q. And when did you first learn about it?

A. I can't remember when it was.

Q. Sir?

A. I don't know when it was.

Q. You saw the bulletin that was posted, didn't you?

A. I can't say that I did.

Q. Let me ask you to look at Defendants' Exhibit No. 1?

A. Yes, sir.

Q. Sir?

A. It looks like it, yes, sir.

Q. Do you know where that was posted?

A. No, sir.

Q. Do you know when it was posted?

A. No, sir.

Q. Whose duty is it to post it?

A. The Master Mechanic's.

Q. All right. You knew about it before it was posted, didn't you, Mr. Mitchell?

A. I can't truthfully say that I did, no, sir.

Q. Well then was your first information that these jobs were going to be abolished when the bulletin went up?

A. They were off when I first found it out, yes, sir.

Q. They were off when you first found it out?

A. Yes.

Q. They didn't take you into their confidence about what they were going to do out there, is that right? How long have hostler helpers been employed by the L&N Railroad?

A. I can't answer that.

Q. You don't know?

A. No, sir, I don't know.

Q. Well, have there been hostler helpers out there up until October, 1955 ever since you were employed out there?

A. That is out of my department.

Q. Sir?

A. The hostlers are out of my department.

Q. Do you know whether or not the hostler helpers have been there for the last 25 or 30 years?

A. I couldn't truthfully say that I do know it.

Q. Now, Mr. Mitchell, when you first learned that the hostler helpers jobs were going to be abolished, I want to ask you if you didn't discuss the situation with Mr. Kirchner and Mr. Parsons, and if you didn't tell them this, or this in substance, that "I believe you are going to have trouble about getting rid of these jobs"?

A. I didn't say that, no, sir.

Q. Sir?

A. I didn't say anything like that, no, sir.

Q. You didn't say anything like that?

A. No, sir.

Q. Do you say you didn't even discuss the situation with Mr. Kirchner or Mr. Parsons after this bulletin went up?

A. No.

Q. You had no discussion of any kind relating to the abolition of the hostler helpers jobs with Mr. Kirchner or Mr. Parsons, is that right?

A. That's right, yes, sir.

Mr. Taylor:

If Your Honor please, I would like to have this document marked for identification as the Defendants' next exhibit number.

(Defendants' Exhibit No. 3 was marked for identification.)

Q. Now, Mr. Mitchell, I want to ask you—

Mr. Gibson:

Let's see this a minute.

Mr. Taylor:

Oh, excuse me. I beg your pardon, I was a little impatient.

Mr. Gibson:

All right, here you are.

Q. Mr. Mitchell, I hand you a document that has been identified as Defendants' Exhibit 3.

A. Yes.

Q. Which appears to be a carbon copy of an original and ask you if you recognize it? Read it over, take your time.

A. All right.

Q. Did you see the original of that letter?

A. I imagine so.

Q. That is identified as Defendants' Exhibit 3?

A. I imagine so.
Q. It is addressed to you, is that right?
A. Yes, sir.

Mr. Taylor:
Your Honor, may I read this at this time?

The Court:
Have you offered it in evidence yet?

Mr. Taylor:
Excuse me. I offer it in evidence at this time.

Mr. Gibson:
We have no objection.

The Court:
All right, go ahead.

Mr. Taylor:
The letter is identified as Defendants' Exhibit 3. It is dated Boyles, Alabama, on October 18, 1955, Desk A, Mr. B. M. Mitchell.

"We have been instructed to abolish all outside hostler helpers jobs at Boyles roundhouse. It is understood, of course, that the herders will protect the locomotive switches at the roundhouse track when any outside moves are made.

"In our recent conversation it was understood that as many outside moves as possible would be eliminated, and when it became necessary to swap locomotives account of inspection or account defects, the engine crew would take the engine to the roundhouse and make the swap.

"I find nothing in the agreement that could be construed as justifying any complaint as such movement.

"Your co-operation will be very much appreciated."

Signed by J. B. Quiggins, Master Mechanic, with copies indicated to Mr. J. R. Parsona and L. I. Mulvaney.

Q. Now, you received this letter Mr. Mitchell, now that your recollection has been refreshed, before the bulletin was posted, didn't you?

A. Well, I discussed it with the Master Mechanic, yes, sir.

Q. Well, you got this letter?

A. Yes, sir.

Q. Before, from Mr. Quiggins?

A. He is the Master Mechanic.

Q. Well then, in case I asked the wrong question, you discussed the abolition of the hostler helpers job with the Master Mechanic before the bulletin was posted?

A. Yes, sir.

Q. And this letter refers to a discussion you had before he wrote this letter dated October 18, isn't that right?

A. That's right.

Q. Now, Mr. Mitchell, didn't you tell me just a minute ago that when this bulletin was posted, Defendants' Exhibit 1, that was the first knowledge you had that the hostler helpers jobs were going to be abolished?

A. I don't think I told you I saw the bulletin, I don't think I did.

Q. Well, didn't you tell me that when the bulletin was posted, whether you saw it or not, that that was the first time you knew they were going to be abolished?

A. Well—

Q. And if I hadn't shown you that letter dated the day before you would have stuck to that testimony, wouldn't you?

A. Well, now you asked me did I talk to Mr. Parsons or Mr. Kirchner about it. I didn't talk—

Q. Yes, sir, I also asked you when you learned about it, and I am asking you now if you didn't tell me you learned about it when the bulletin was posted?

A. I believe I did, yes, sir.

Q. You didn't tell me the correct thing, did you? You were wrong about that, weren't you?

Mr. Gibson:

That is argumentative, Your Honor.

The Court:

I sustain the objection to that.

Q. Well, now we are straight, are we not, Mr. Mitchell, that you had had at least one discussion with Mr. Quiggins about the bulletin on the hostler helpers jobs before the bulletin was posted?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Is that the only discussion you had with him?

A. I don't know how many times I discussed it with him.

Q. Well, did you discuss it with him more than once?

A. I think we did, I am pretty sure we did.

Q. And about when did this discussion take place? Now, we have got two dates fixed here. Defendants' Exhibit 1 shows that the bulletin was posted on October 19 and Defendants' Exhibit 3 shows that you received a letter on the same subject dated October 18.

Now, with relation to those dates, when did you have this conversation with Mr. Quiggins?

A. Prior to that.

Q. How long prior?

A. I don't remember.

Q. How many days?

A. I couldn't answer that, I don't know.

Q. Well, as much as a week?

A. I don't know.

Q. Could it have been as much as a week?

A. It is possible, yes, sir.

Q. Now then, you knew then at least a week before October 18—

Mr. Simpson:

May it please the Court—

Q. —that those hostler helpers jobs were going to be abolished?

Mr. Simpson:

We object to that. The witness says he doesn't know how long before the 18th, and the attorney says "Now, its certain it is as much as a week." I say that is an improper statement.

Mr. Taylor:

If the Court please he told me he didn't know anything about it before it happened. Then he says he knew about it when he got this letter.

The Court:

I overrule the objection. The jury has heard what has been said. Let's try to avoid as much repetition of detail as we can.

Mr. Taylor:

All right, sir.

The Court:

We are going into an awful lot of detail. You have been on this an hour.

Mr. Taylor:

This is a very important witness, Your Honor. I hate to take the time of the Court and jury.

The Court:

I don't want to curb your time, but just go ahead. But you have developed that aspect of the testimony.

Mr. Taylor:

All right, sir.

Q. In your discussion with Mr. Quiggins about the abolition of the hostler helpers jobs did you have any objection, did you make any objection to that proposed move on the part of the Railroad?

Mr. Simpson:

We object to that as being immaterial, may it please the Court.

The Court:
I sustain the objection.

Mr. Simpson:
What he thought about it.

Mr. Taylor:
I didn't ask him what he thought. I asked him if he stated any objection, Your Honor.

Mr. Simpson:
Entirely irrelevant.

The Court:
I sustain the objection.

Q. Now, when you discussed this with Mr. Quiggins did you discuss any possible trouble that might arise as a result of the abolition of the jobs?
A. No, sir.
Q. Sir?
A. No, sir.
Q. Nothing was said about that?
A. So far as I know there wasn't, no, sir.
Q. Now, Mr. Mitchell, as a matter of fact you had information several days before this walkout a walkout was likely, did you not?
A. No, sir.
Q. You say that didn't happen?
A. No, sir.
Q. Do you know a man named L. C. Parrot?
A. Engineer, yes, sir.
Q. How long have you known him?
A. Quite some time. He has been here and in Decatur.

Q. Several years?

A. Yes, sir.

Q. Mr. Mitchell, I will ask you if it is not a fact that you told Mr. Parrot on either Friday or Saturday before the walkout which occurred on Sunday night that it looked like there was going to be labor trouble, and for him to stay out?

A. I didn't tell him that. He didn't talk to me about it.

Q. Did you have a conversation with Mr. Parrot on either Friday or Saturday before the Sunday walkout?

A. Not concerning this walkout, no, sir.

Q. Well, what did you talk to him about?

A. I don't know whether I talked to him about anything at all.

Q. Where did you talk to him?

A. I say I don't know that I even talked to him or not. I know I didn't talk about this.

Q. I thought you said you did talk to him. I'm sorry.

A. No, sir.

Q. Now, your recollection is you don't know whether you talked to him or not, is that correct?

A. That's right.

Q. How many employees were there on duty at the Boyles Yard on October 23, if you know, or in your best judgment?

A. All of my Sunday switch engines were working.

Q. I am asking you, if you know, sir, about how many people that was?

A. There was about 20 switch engines, and there is five members to each one of them.

Q. You said you left there about 8:30 or 8:45 I believe?

A. Yes.

Q. When would the next shift normally have started to work that Sunday night?

A. 10:45 or 11:00 o'clock.

Q. Do you know approximately how many men were on that shift?

A. On the third shift?

Q. Yes, sir.

A. The night of the stoppage?

Q. Yes, sir.

A. There wasn't anybody out there.

Q. How many men were assigned to that shift that would have come to work out there, had there not been a work stoppage, if you know?

A. About 16 jobs.

Q. About how many men would that represent?

A. Five times that.

Q. Five times that?

A. Yes.

Q. Then, of course, you had Yard clerk personnel, and all of those people inside would have been there too?

A. Yes, sir.

Q. Now, do you know how many men were on the shift that would have started to work at 7:00 o'clock Monday morning had there not been a work stoppage?

A. Well there was 21 switch engines working first shift I believe at that time. That is in Birmingham and Boyles. That is besides the clerks.

Q. Did you say how many men?

A. Yes, sir.

Q. If you did I didn't hear you.

A. 21 jobs.

Q. 21 jobs?

A. Yes, sir.

Q. Let me ask you this, isn't it a fact that there are approximately 2,500 L&N employees at the Boyles Yard, or were on October 23?

A. 2,500?

Q. Yes, sir. I don't mean working all the time, but I mean employees actively employed in Birmingham by the L&N, were there not approximately 2,500?

A. I don't know.

Q. You don't know?

A. I don't know how many they have got in the Shop.

Q. All right now, I want to go into another line of your testimony yesterday, Mr. Mitchell.

A. All right.

Q. And so that we might fix the time properly, will you state again, and pardon the repetition, but what time you got back to your house after you left the Superintendent's Office Monday morning?

A. It was around 9:20 or 30, something like that.

Q. Around 9:20 or 30?

A. Something like that Monday morning.

Q. Now, you testified yesterday in response to the lawyers question that you got with Mr. Woelde that morning some time to check some waybills, is that correct?

A. That's right.

Q. What time on Monday morning did you first contact Mr. Woelde?

A. Mr. Woelde called me.

Q. Where were you when he called you?

A. At home.

Q. What time did he call you?

A. Oh, it was a little before 11:00.

Q. A little before 11:00?

A. Yes.

Q. So then you were at home from 9:20 until 11:00, is that correct?

A. Yes.

Q. All right, did Mr. Woelde arrange to come pick you up?

A. Yes, sir.

Q. Now, I am not sure about my directions, Mr. Mitchell, but based on my diagram here, so-called, is your home in this direction from the powerhouse gate (indicating)?

A. No, it is about middleways between the powerhouse and the Mechanical Office, on the hill.

Q. On the hill back up here (indicating)?

A. Yes, sir.

Q. To get to your house by road, do you come by Vanderbilt road around this way (indicating)?

A. Yes, you have to cross Vanderbilt Road.

Q. And you say then that Mr. Woelde called you about 11:00 o'clock Monday morning?

A. That's right, a little before 11:00 I believe.

Q. Did you meet him somewhere or did he pick you up?

A. He came by the house and picked me up.

Q. He came by the house and picked you up?

A. Yes, sir.

Q. You were in his car?

A. Yes, sir.

Q. Now, how long did you stay at your house?

A. Long enough for him to stop and me to get in.

Q. You got right in and left?

A. Yes, sir.

Q. This would have been about 11:30 you say?

A. No, sir, a little before 11:00.

Q. Oh, I'm sorry, a little before 11:00?

A. Yes, sir.

Q. Where did you go when you left the house in Mr. Woelde's car?

A. Master Mechanic's Office gate.

Q. To the Master Mechanic's Office gate?

A. Yes, sir.

Q. Is that the Master Mechanic's entrance that we have indicated there with the little road off the highway?

A. Yes, sir, that's right.

Q. Did you come down Vanderbilt Road from the direction of the powerhouse gate?

A. No, I don't think so. Well, I don't remember how we got on that road.

Q. You don't remember?

A. No, I don't remember.

Q. You don't remember which direction you came then?

A. We didn't come the powerhouse end of it, no, sir.

Q. You didn't come from the powerhouse end of it?

A. No, sir.

Q. Well, is there any other way for you to have come except from the other direction?

A. No, sir.

Q. From the roundhouse gate direction?

A. There are several streets that run into it right there, that run into Vanderbilt Road.

Q. You don't remember your route, is that correct?

A. No, sir, I don't remember how we got to Vanderbilt Road, no, sir.

Q. Well, you said you think you went directly to the Master Mechanic's gate?

A. The shortest way, directly as we could.

Q. The most direct way possible?

A. Yes, sir.

Q. You didn't pass any other entrances at least until you got to the Master Mechanic's gate, is that correct?

A. Didn't what?

Q. Didn't pass any other entrances to the Boyles Yard?

A. No, sir.

Q. Now, is it your testimony that you got to the Master Mechanic's gate—let me just ask you what time did you get to the Master Mechanic's gate?

A. About 11:00 o'clock.

Q. About 11:00 o'clock?

A. Yes, sir.

Q. Are you positive about that time?

A. Sir?

Q. Are you positive about that time.

A. Yes, sir, that's about right.

Q. You don't think you could be mistaken?

A. We went in the Yard five minutes after 11:00.

Q. Five minutes after 11:00?

A. Yes, sir, I'm pretty sure that's right.

Q. Let me make a note of that. All right, there was no automobile blocking that gate when you went up there, was there?

A. Partly blocked, yes, sir.

Q. Didn't you tell the lawyer yesterday that you could have gotten in the gate in your car all right?

A. We got in without moving.

Q. Without moving the car?

A. Yes, sir, we did that.

Q. Do you tell the jury that the car was not moved?

A. No, sir, it was not moved.

Q. Never moved that car?

A. No, sir.

Q. You went around it, is that your testimony?

A. Yes, sir, around the front or back of it one.

Q. Excuse me, what did you say?

A. I say we went around the front or back end of it one, one way or the other.

Q. It was not moved, you are positive of that?

A. I don't think so, no.

Q. Was there a gate at that Master Mechanic's entrance?

A. Yes, sir.

Q. Was it locked on this occasion?

A. It was closed, it wasn't locked with a lock and key.

Q. Didn't it have a chain or lock on it?

A. No, I don't think so.

Q. Is there a chain and lock customarily kept on that gate when it is closed?

A. No, it is very seldom it is ever closed.

Q. I am asking you when it is closed?

A. No, sir.

Q. Do you have a key that would unlock the lock on it?

A. I have a switch key, yes, sir.

Q. That will unlock all of the locks around there?

A. Switch locks, yes, sir.

Q. Are you telling us you don't have any recollection of whether the gate was locked or are you telling us it was not locked?

A. I don't remember whether it was locked or not, no, sir.

Q. If it was locked, you unlocked it?

A. I opened the gate.

Q. You opened the gate?

A. Yes, sir.

Q. Will you tell me, please, who you saw at the Master Mechanic's gate at five minutes past 11:00 that Monday morning when you came there with Mr. Woelde?

A. Well, there was Fireman Barnett there, Fireman Hawkins was there, Fireman Latchman was there, and Reese Thomas was there, and Jody Johnson I believe was there.

Q. How long have you known Jody Johnson?

A. Several years.

Q. What job did he have with the Railroad?

A. I don't know what job he has.

Q. You don't know what job he has. Do you know what job he had at that time?

A. No, sir.

Q. Now, you say you have known him several years?

A. Yes, sir.

Q. You have seen him frequently during that time, haven't you?

A. Quite often, yes.

Q. Is there any doubt in your mind about that being Jody Johnson?

A. No, I am reasonably sure he was there.

Q. You are sure he was there?

A. Yes, sir.

Q. Now, you know, don't you, that there are two people called Jody Johnson who work for the L&N Railroad in Birmingham, don't you?

A. Yes, sir.

Q. They call them Big Jody and Little Jody, don't they?

A. That's right.

Q. Are they father and son?

A. I think so, I am not too sure about it.

Q. Did you see Big Jody, or was that Little Jody that you saw out there that morning?

A. Little Jody.

Q. Do you know how he was dressed?

A. No, sir.

Q. You just know you saw him?

A. Yes, sir.

Q. Did you know all these men by name when you saw them out there?

A. Yes, sir.

Q. Nobody had to tell you who they were?

A. No, sir.

Q. Did you tell Mr. Woelde who they were?

A. Yes, sir.

Q. He didn't know them, is that right?

A. He didn't know all of them.

Q. Now, had you picked up your gun that you left at home, when you came back out there to the Master Mechanic's gate or was it still at home?

A. Still at home.

Q. Did Mr. Woelde have his pistol with him?

A. Not that I know of.

Q. What happened when you got up there to the Master Mechanic's gate?

A. You mean any conversation?

Q. Yes, the conversation, what did you say, and what was said to you, and please identify each person that said it.

A. I just told them I wanted to get in and check the waybills for some perishables and livestock that I understood was on the yard. They said we wasn't going in there.

Q. Who told you that?

A. Reese Thomas told me.

Q. Reese Thomas told you you were not going in?

A. Yes, sir.

Q. Is that what you tell this jury?

A. Letchman got out of his car sitting across the street and came over and got in the conversation, and he was willing for us to go in, and Thomas kept on until we did get to go in there.

Q. There wasn't one single solitary soul inside of the Yard at that time, was there?

A. Not that I know of.

Q. And there wasn't one single train running, was there?

A. Not that I know of.

Q. You and Mr. Woelde couldn't have moved a train if you wanted to, could you?

A. No, sir.

Q. You couldn't have iced any frozen meat, could you?

A. No, I couldn't ice it.

Q. You couldn't have moved any livestock, could you?

A. No.

Q. There wasn't any reason for Reese Thomas to object to your going in that Yard, was there? Just tell us.

A. I don't know. You mean why he wouldn't let us go in?

Q. There wasn't any reason for him to keep you from going in there, was there?

A. There wasn't going to be any work going on.

Q. You were not going to move any trains?

A. We wanted to check the waybills, is all we wanted to do.

Q. You were not going to move any trains?

A. No.

Q. Weren't going to do any work there?

A. No, sir.
Q. He knew that?

Mr. Gibson:
We object to that.

The Court:
I sustain the objection. He can't testify to what somebody else knew.

Q. Let me ask you something else, if Mr. Thomas didn't tell you this, didn't he tell you that if there was any livestock in there that they would go in there with you and move it if it was necessary, or water the livestock, or whatever was necessary to keep proper care of it? Didn't he tell you that?

A. Something along that line, yes.
Q. Well, he told you that in substance, didn't he?
A. In substance, yes. But he also said he didn't care about the dead meat, or something like that.
Q. He was referring to frozen meat, wasn't he?
A. That's right.
Q. Where did you get those waybills?
A. Yard Office.
Q. At the Yard Office?
A. Yes.
Q. Did you get them or did Mr. Woelde get them?
A. We both got them.
Q. Both went in?
A. Yes.
Q. You didn't have any trouble getting the waybills, did you?
A. No, just had to hunt for them.
Q. Sir?
A. No, just had to hunt for them.
Q. When did you pick them up?

A. When?
Q. Yes.
A. That morning.
Q. That morning?
A. Yes, sir.
Q. After you left your house?
A. We went to the Yard Office after the waybills.
Q. Just a minute. You told me a moment ago that you went directly from your house to the Master Mechanic's gate by the most direct route, didn't stop by any other entrance to the L&N?
A. That's right.
Q. Then you were mistaken about that, you went to the Yard Office first?
A. No, we had to go through this gate to get to the Yard Office.
Q. You didn't have any waybills when you went in there?
A. No, sir.
Q. You went to the Yard Office and got them, is that right?
A. That's right.
Q. You say that Reese Thomas told you he was not going to let you in that office, is that right?
A. Yes, sir.
Q. Did you report that to the Police Department?
A. No, sir.
Q. Or County Sheriff's office?
A. No, sir.
Q. Was your answer "No, sir"?
A. Sir?
Q. Was your answer "No".
A. No, I didn't report it.
Q. What time did you come out of the Master Mechanic's gate?

A. We was in there 25 minutes.

Q. You were in there 25 minutes?

A. About 11:30.

Q. Can you give me any estimate as to the time?

A. 11:05 until about 11:30.

Q. Now, Mr. Mitchell, could you be an hour off in your estimate of the time out there?

A. Sir?

Q. Wasn't it about 12:05 that you went in there, and about 12:35 that you came out?

A. I don't—I thought it was before lunch.

Q. I want to ask you if you will read this over and see if it won't refresh your recollection about the time?

A. Let me get my glasses.

The Court:

Will you point out some specific place?

Mr. Taylor:

Yes, sir, I can, Your Honor, to save him reading it all.

Q. Mr. Mitchell, I am referring to this right here.

A. It is 12:05 to 12:30, yes, sir.

Q. You recall now then that you went into the Master Mechanic's gate on this occasion about five minutes past 12:00?

A. Yes, sir.

Q. And stayed approximately 30 minutes, and came out at approximately 12:35, is that right?

A. Yes, sir.

Q. I believe that you stated that as you came out at 12:35 Monday afternoon that you had some conversation there after you came out, is that right?

A. That's right.

Q. What was that conversation?

A. I just wanted to show them what—the waybills we had.

Q. Did you show them?

A. No, they wouldn't look at them.

Q. Who did you talk to?

A. This whole group was still there, and I believe Reese is the only one we talked to.

Q. Did Jody Johnson come over to your car and look in the back of it, or do you recall that?

A. Back seat, yes, sir.

Q. What did he say?

A. He just looked to see if we were bringing anybody out of there.

Q. You were not, were you?

A. No, sir.

Q. About how many minutes would you say this series of discussions took place, about five or ten?

A. About five I imagine.

Q. That would make it about 12:40 then?

A. Something like that, yes, sir.

Q. After having had your recollection refreshed, you are fairly positive about the time being 12:40 p. m. Monday, is that correct?

A. Yes, sir.

Q. Reese Thomas was there, is that correct?

A. That's right.

Q. That is at the Master Mechanic's entrance?

A. Yes, sir.

Q. Approximately 4-½ miles from the Passenger Station, is that correct?

A. Yes, sir.

Q. Now, Mr. Mitchell, if anybody has stated that Reese Thomas was at the Passenger Station at 12:40 Monday they are mistaken, is that correct?

A. He was at Boyles, yes, sir.

Q. Because he was at Boyles at 12:40 Monday, is that right?

A. Yes, sir.

Q. You stated to us yesterday I believe that after you left the Master Mechanic's gate on this occasion that we are inquiring about that you did not visit the L&N premises again until Wednesday night, is that correct?

A. I think that's right, yes, sir.

Q. That includes both the Passenger Station and the Boyles Yard?

A. No, I was down at the Passenger Station that night putting trains away.

Q. Sir?

A. I was down at the Passenger Station that night putting some trains away.

Q. That is Monday night?

A. Yes, sir.

Q. Then you went to the L&N premises on Monday night?

A. Yes, sir.

Q. When was the next time you went?

A. I was down there the day they placed that stock, I don't know what day it was. I believe that was Monday afternoon, at Vanderbilt Road.

Q. You went Monday afternoon?

A. Yes, sir.

Q. Where did you go Monday afternoon?

A. I say I went to Vanderbilt Road and watched them place that stock. It was Monday afternoon they placed that stock. I didn't get on the property there, just at Vanderbilt Road there.

Q. All right, how about Tuesday?

A. I don't think I went around Tuesday at all.

Q. You didn't go to the Passenger Station or Boyles Shop or anywhere Tuesday?

A. No.

Q. Where did you spend your time Tuesday?

A. Home.

Q. At home?

A. Yes, sir.

Q. Did you talk to L&N officials?

A. Yes, sir.

Q. Who?

A. I am pretty sure I talked to Mr. Parsons.

Q. Did he give you any instructions about how to handle yourself during this walkout?

A. Other than just stay home until he called me.

Q. He just told you to stay home until he called you?

A. Yes, sir.

Q. You told us yesterday that you did go back on Wednesday night, or rather you told the lawyer that examined you. What time did you go back Wednesday night?

A. Just a few minutes before everybody went in.

Q. Can you give us your judgment as to what time of night that was?

A. It was dark, I imagine around 8:00 o'clock, 8:30, something like that.

Q. Around 8:00 o'clock?

A. Yes.

Q. If you have any doubt in your mind about that time I wish you would fix it as close as you can?

A. I don't remember what time it was, but it was on the second shift, after dark.

Q. You think approximately 8:00 o'clock?

A. Yes, sir.

Q. What gate did you go in?

A. I went in the powerhouse gate—no, I went down to the Master Mechanic's gate I am pretty sure.

Q. You went in the Master Mechanic's gate?

A. Yes, sir.

Q. Did you walk in or drive in?

A. I walked in.

Q. You didn't have any trouble, did you?

A. No, sir, there wasn't anybody around it.

Q. There wasn't anybody around it?

A. No.

Q. When you got in the Yard at approximately 8:00 p. m., Wednesday night who did you see in there?

A. There was several over there, I don't remember who they were.

Q. Were they L&N employees?

A. They were L&N employees.

Q. Who were they? I am talking about inside of the gate.

A. Inside of the Yard Office, two or three in there, but I don't remember who they were at this minute.

Q. You don't remember who they were?

A. No, sir.

Q. Did you see any men carrying weapons of any kind inside of the Yard Office there, or inside of the Yard, anywhere inside of the Yard?

A. Inside of the Yard?

Q. Yes, sir.

A. No, sir.

Q. You didn't see any detectives or anything there with weapons?

A. I don't believe he was over there at that time, Wednesday night, no, sir.

Q. Did you see any detectives there at any time during the walkout?

A. No, sir.

Q. Any people with guns?

A. No.

Q. Now, you knew before you came down here from Evansville that you had to get on this witness stand and give this testimony against Reese Thomas and Baum and these other people to keep your job, didn't you?

A. No, sir.

Mr. Taylor:

That's all. Take the witness.

Re-Direct Examination.

By Mr. Gibson:

Q. You have been on the stand quite a while, but I have one or two other questions.

You told Mr. Taylor and told the jury in response to one of Mr. Taylor's questions that you remembered Reese Thomas being at the powerhouse gate on Monday morning, I believe you said because he was the man that you had the conversation with?

A. On Monday morning?

Q. Did I misunderstand you about that?

A. He was at the powerhouse gate. I might have told you the roundhouse.

Q. Did you have any conversation with him at the powerhouse gate Monday morning?

A. Yes, sir, going to town.

Q. What was the substance of that conversation?

A. Just generally, that the Shop was shut down, that the Railroad was shut down, wasn't anybody working.

Q. Did you tell Thomas that or did Thomas tell you that?

A. Thomas told me that.

Q. In response to another question by Mr. Taylor you stated when he asked you whether you waited until you got home to telephone the Superintendent Sunday night, you said you didn't have time to telephone from your office.

I will ask you whether or not anyone of the three men who came into the office, the three firemen, said anything to you about a time limit on when you got out or anything like that?

A. Well, I think—I don't think they gave me an exact time limit, but I had to get out right now.

Q. Right now?

A. Yes, sir.

Q. Yes, sir. Now, when you went down to the Passenger Station to look after those engines Sunday night, did you see any of the men there who are Defendants in this case?

A. At the Passenger Station?

Q. Yes, sir.

A. Yes, sir, I saw Mr. Weldon down there.

Q. J. M. Weldon?

A. Yes, sir.

Q. You got on the engine at 16th Street and rode it up under the shed down there, didn't you?

A. Yes, sir.

Q. Was Weldon on it?

A. Yes, sir.

Q. Was Weldon part of the crew?

A. No, sir.

Mr. Gibson:

That's all.

Mr. Taylor:
Your Honor, may I ask one more question that I overlooked?

The Court:
Just one.

Re-Cross Examination.

By Mr. Taylor:
Q. You stated you saw somebody placing stock on Tuesday morning?
A. No, I believe it was Monday they placed it.
Q. Who placed that stock.
A. Some of the men.
Q. What men?
A. The switchmen, engineers and firemen.
Q. You say this was Monday?
A. I believe it was Monday.
Q. At what time?
A. In the afternoon.
Q. In the afternoon?
A. Yes.
Q. You saw them?
A. Yes, I saw them placing that.

Mr. Taylor:
I believe that's all.

The Court:
Come down.

(Witness excused.)

The Court:
Gentlemen, we are going to take a 20 minutes recess at this time.

(A short recess was had.)

The Court:
Call your next witness.

Mr. Gibson:
Mr. Woelde.

Mr. Taylor:
It is understood, is it not, that Mr. Mitchell is not excused? He will still be available?

The Court:
He hasn't been excused, no.

Mr. Taylor:
We may want him further.

C. E. WOELDE, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Gibson:
Q. Is this Mr. C. E. Woelde?
A. That's right.
Q. Mr. Woelde, who do you work for?
A. L&N Railroad Company.
Q. What is your position?

A. Trainmaster.

Q. At what place?

A. At Mobile, Alabama.

Q. In October, of 1955, were you also employed by the L&N?

A. Yes.

Q. Where?

A. Here at Birmingham.

Q. In what capacity?

A. As Assistant Trainmaster.

Q. Do you recall the incident in late October, of 1955, when there was a strike at Boyles?

A. I do.

Q. Did you have occasion at any time while that was going on to go to the Company's premises?

A. Yes.

Q. When was that?

A. About noon on that October 24, on Monday, on instructions of the Superintendent I went by and picked up Trainmaster Mitchell at his house and proceeded to the Boyles Yard. We were to go in and check on frozen meats or livestock on waybills at the Yard Office. Do you want me to describe the whole procedure?

Q. Yes, sir. Now then, did you on those instructions go to the premises of the L&N Railroad Company at Boyles?

A. Yes, we did.

Q. You and Mr. Mitchell?

A. Mr. Mitchell and I, yes, sir.

Q. What gate did you attempt to enter?

A. We were first going to go in the gate which is located at 39th Avenue and Vanderbilt Road that goes, the walkway goes by the powerhouse, but there was, oh, some 30 men around that gate, so we pro-

ceeded on down Vanderbilt Road and turned off on a little dirt road, I don't know the name of the road that goes back to the gate at the Master Mechanic's Office.

And there was, as we were going from Vanderbilt Road to the gate an automobile passed us about Midway between there, and drove up and drove up in front of the gate going into the Yard at that point and stopped.

When we came up we got out of the automobile, and there was three men there at that time, and there was two in this automobile. We got out and told them that we wanted to go into the Yard to check waybills to see if there was frozen meat or perishable or any animals or livestock in there that needed attention. And at first one of the men informed us we couldn't go in.

Q. Just a minute.

A. All right.

Q. Who said that to you?

A. It was a fireman. I knew him by sight only at that time.

Q. Do you see him in the Courtroom now?

A. Yes, he is here now.

Q. Will you point him out?

A. It is the gentleman there in the sport shirt.

Q. All right, sir. Now, do you see any other men in the Courtroom at the present time who were in that group?

A. Yes, there is the gentleman back—no, let's see, I don't believe I see him. Yes, the first gentleman over there next to the fellow with the short-sleeve shirt, both of those men were there.

Q. That is Mr. Barnett and Mr. Letchman, is that right?

A. That's right.

Q. What else was said?

A. Well, the gentleman I described as Mr. Thomas told us that we couldn't go in for anything. And we explained what we wanted to go in the Yard for, and the other two men said that they thought they could let us go in and check on livestock and perishables, that they should let us go in. And Thomas agreed at that time then for us, that we could go in, but he would give us 30 minutes to be back out, and if we are not out they would come in after us.

On saying that, he moved his automobile up where we could drive in the gate, and Mr. Mitchell opened the gate, and I drove in, picked him up, and we went to the Yard Office and got our waybills, checked through all of them and were back at the gate I think in about 20 minutes.

And at that time Mr. Mitchell got out and was showing Mr. Thomas, I believe at that time the waybills that we had got in the Yard Office. He told him that some of the frozen meat would have to be reiced, and Mr. Thomas stated at that time that he didn't give a damn about frozen meat, that he was interested in livestock.

And they looked in the car to see that we were not bringing anything else out other than these waybills. And when we got ready to leave he told us he was not going to let anybody in to reice the cars, or they were not going to let either Mitchell or I back in on the premises any more.

Mr. Gibson:

Take the witness.

Cross Examination.

By Mr. Taylor:

Q. Mr. Woelde, when did you come to Birmingham with the L&N Railroad?

A. I came to Birmingham on January 1, 1951.

Q. January 1, 1951?

A. Yes, sir.

Q. What was your job then?

A. I was Assistant Trainmaster in the Terminal.

Q. Was that the same job you held in October, of 1955?

A. No, in October, of 1955, I was working on the road between Decatur and Montgomery, and on a branch line we have between Birmingham and Gadsden and Calera.

Q. Was Mr. Ben Mitchell your superior in October, 1955?

A. No, directly he was not. I was working under another Trainmaster.

Q. Where was your place of duty on October 24, 1955?

A. Well, on instructions of the Superintendent it was at Boyles.

Q. Now, you had some trouble with the switchmen shortly after you came to Birmingham, didn't you?

A. Not to my knowledge, no.

Q. Isn't it a fact, Mr. Woelde, that the switchmen threatened to walk out unless they transferred you?

A. That's not true to my knowledge, no, sir.

Mr. Simpson:

We don't object to that, but we do want to be allowed ourselves to go back into some past history. The Court has held us pretty closely to what hap-

pened on this particular date. We want the same privilege.

The Court:
When was this incident?

Mr. Taylor:
I withdraw the question.

The Court:
All right, the question is withdrawn. I believe he answered though, didn't he?

Mr. Simpson:
He did answer it, yes, sir.

The Court:
The answer is excluded, then gentlemen.

Q. Now, Mr. Woelde, where were you when you got the instructions to check these waybills for livestock and perishables?
A. At my home.
Q. Where did you live?
A. I lives at 3828 38th Avenue North at that time.
Q. Who did you get these instructions from?
A. From the Superintendent of the L&N.
Q. What was his name?
A. F. W. Kirchner.
Q. You drove then to Mr. Ben Mitchell's house?
A. That's right.
Q. Did you visit the L&N premises while you were going there?
A. No. I went directly to Mr. Mitchell's house, picked him up, and then went to the L&N premises.

Q. I believe you left Mr. Mitchell's house and went by the most direct route to the Master Mechanic's gate, didn't you?

A. Yes, I would say so.

Q. You didn't go by any other gate, is that correct?

A. We drove by the gate leading to the powerhouse.

Q. You say you and Mr. Mitchell drove by the gate leading to the powerhouse?

A. Yes.

Q. This is the occasion that you and Mr. Mitchell went to check the waybills, is that right?

A. That's right.

Q. Now, are you positive that you went by that powerhouse gate?

A. I am positive we went by, yes, sir.

Q. Mr. Mitchell was in a position to know whether you went by the powerhouse gate or not, wasn't he?

A. He should have, he was in the car.

Q. If he has testified that you two went directly to the Master Mechanic's gate, is he mistaken?

Mr. Simpson:

We object to that.

The Court:

I sustain the objection.

Q. Did you stop at the powerhouse gate?

A. No, we drove by.

Q. Now, you didn't have to come down Vanderbilt Road—excuse the roughness of this diagram. You didn't have to come down Vanderbilt Road to get to this powerhouse gate, from this powerhouse gate to get to the Master Mechanic's gateway, did you?

A. If you are coming from town you do, yes.

Q. I am asking you, directly, aren't there roads coming into Vanderbilt Road from this direction (indicating)?

A. Yes.

Q. When you got to the Master Mechanic's gate, approximately, or in your best judgment what time was it?

A. Somewhere in the neighborhood of 12:00 noon.

Q. Now, when did you first become aware of any other automobile there?

A. There was two automobiles I believe when we drove up other than the car that passed us between Vanderbilt Road and the Master Mechanic's gate.

Q. Do you know who was in the car that passed you?

A. I knew by sight, yes, sir.

Q. Who was it?

A. It was Mr. Barnett and Mr. Letchman.

Q. They were in the car that passed you?

A. No, no, they were in the car that was already at the gate.

Q. Were there only two men in it?

A. I only remembered two, yes.

Q. All right, what happened to this car that passed you?

A. They stopped in front of the gate leading to the Master Mechanic's Office.

Q. I believe you told the attorney—if I am wrong, correct me.—that this car that passed you drove in front of and blocked the gate to the Master Mechanic's gate?

A. That's right.

Q. Is that correct?

A. Yes.

Q. They parked in such a fashion, did they, that you and Mr. Mitchell couldn't enter that gate?

A. That's right.

Q. As long as that car was there?

A. We couldn't enter it with the car there.

Q. With the car there?

A. We couldn't enter it with the car there.

Q. You couldn't go around either front or back of it to get in the gate?

A. No.

Q. Now, I believe you also testified that after you had this conversation with Mr. Thomas, that Mr. Thomas moved his automobile, is that correct?

A. He did.

Q. Did he himself move it?

A. I don't know whether he moved it or not, but the car was pulled ahead so we could get in.

Q. Where was Mr. Ben Mitchell when this car was being moved?

A. He was in the process of unlocking the gate and opening it so I could drive in.

Q. Did he see the car being moved?

A. He did.

Q. You didn't get out of your automobile, did you?

A. Yes, sir, I got out when we drove up.

Q. Did you get out of your car?

A. I got out of my car while we were blocked by the other car.

Q. You ~~said Mr.~~ Mitchell unlocked the gate?

A. Yes, sir.

Q. Will you please tell the jury the best you can if you can recollect just what he did in unlocking the gate?

A. To the best of my knowledge it has some kind of fastner to it that can be locked, or it can be

fastened without a lock. And he unfastened the gate and opened it. It is a big swinging gate on hinges.

Q. There was a chain around that gate where it closed, wasn't there?

A. Not to my knowledge. I didn't see that.

Q. There was a lock on it, wasn't there?

A. I didn't see any lock. I didn't see him unfasten the gate. He unfastened the gate and opened it.

Q. He unhooked the gate to open it?

A. He unhooked the gate and opened it.

Q. Where were you standing when that conversation was held about the purpose of your visit there?

A. I was standing beside my car which was parked adjacent to the car occupied by Mr. Letchman.

Q. How many feet were you from Mr. Reese Thomas and Mr. Mitchell when they had this conversation?

A. Within 6 or 8 feet.

Q. Within 6 or 8 feet?

A. Yes.

Q. Did you know the names of any of those people out there?

A. At that time, no.

Q. Now, you have identified previously a man being there by the name of Jody Johnson, haven't you?

A. Mr. Johnson was there I found out later. At the time—

Q. Do you see him in the Courtroom today?

A. No, I don't see him.

Q. You are positive he was there, is that correct?

A. He was identified to me by Mr. Mitchell after we left.

Q. Did he tell you what his name was?

A. He didn't know, he said he thought they called him "Jody."

Q. Do you know that there are two people with the L&N Railroad in Birmingham called Jody Johnson?

A. No, sir, I don't know that.

Q. As a matter of fact, you didn't know who these men were until Mr. Mitchell told you?

A. By name, no.

Q. You got very close to Reese Thomas on that occasion, didn't you?

A. I would say within 4 to 6 feet.

Q. I will ask you if it is a fact that he had a blue shirt on with sleeves rolled up?

A. At that time?

Q. Yes, sir.

A. I don't know.

Q. Do you recall how he was dressed?

A. No, I don't.

Q. Do you remember whether he had a jacket or shirt on?

A. I don't remember how he was dressed on that date.

Q. I will ask you this, if Mr. Thomas didn't state to you on that occasion this, or this in substance, if there is any livestock in there, we'll go in with you and help move it, do whatever is necessary to properly take care of that livestock; didn't he tell you that substantially, or tell Mr. Mitchell that in your hearing?

A. He made that statement in substance, yes.

Q. Now, Mr. Woelde, was there anybody in the Boyles Yard when you and Mr. Mitchell went in there?

A. We saw no one going in or in the Yard Office or coming back out.

Q. You didn't see a single solitary soul, did you?
A. Nobody.
Q. Is that right?
A. Nobody.
Q. And there were no trains moving?
A. Nothing was moving.
Q. You and Mr. Mitchell didn't go in there to move any trains, did you?
A. No.
Q. You didn't go in there to put any ice in any perishable shipments, did you?
A. No.
Q. You only went in to see what was there, is that correct?
A. We were to check waybills and see what cars were in the Yard.
Q. Mr. Thomas and these other men knew you didn't go in there to move any trains or ice any shipments?

Mr. Simpson:
We object to what they knew.

The Court:
I sustain the objection.

Q. They could see the same as you that there was no work going on in the Yard?

Mr. Simpson:
We object to that.

The Court:
I sustain the objection.

Q. When you were outside the gate did you see any work going on in the Yard?

A. No.

Q. Did you see any men in there walking around?

A. No.

Q. You saw not one soul?

A. Not anybody, I didn't see anyone.

Q. You didn't visit the L&N premises at any further time during the work stoppage?

A. Yes, I visited—that was the only time I visited the Boyles Yard.

Q. Mr. Woelde, you knew that this work stoppage was likely to occur before it came off, didn't you?

A. No, only to the effect that I had heard rumors.

Q. When did you hear the first rumors?

A. Oh, some time Sunday.

Q. About what time?

A. Some time Sunday afternoon.

Q. About 2:00 o'clock or something like that?

A. No, I believe it was later than that, some 4:00 or 5:00 o'clock.

Q. About 4:00 or 5:00 o'clock?

A. Yes.

Q. You say you heard a rumor?

A. Yes.

Q. Who is the first person who told you anything about the possibility of a work stoppage?

A. Well, it was rumored by several men, I don't remember who they were.

Q. Can you tell us one of those several?

A. No, I don't remember anyone in particular.

Q. Can you tell us whether it was an employee of the L&N or not?

A. Yes, they were employees of the L&N.

Q. Were you working Sunday afternoon?

A. No.
Q. Where were you?
A. I was at home.
Q. Were you at home when you first heard the rumor?
A. Yes, I was at home and got a telephone call but I didn't recognize who it was.
Q. I suppose he didn't identify himself, or did he?
A. No.
Q. What did he say to you?
A. He just said he had—asked me if I had heard there was going to be a strike, and I said no, only what rumors I heard the men say.
Q. Well, then, you had already heard other rumors at the time you got this mysterious telephone call, is that right?
A. That's right.
Q. When did you hear the other rumors?
A. That morning at the office.
Q. At the office?
A. Yes.
Q. Is that the Yard Office at Boyles?
A. No, that's the office downtown.
Q. Oh, you were downtown when you heard that?
A. Yes.
Q. What time was that?
A. I don't remember the time; some time that morning. I got there about 7:30 and left at 11:30.
Q. You got there at 7:30, this is Sunday morning you are talking about?
A. Sunday morning.
Q. And stayed there until 11:30?
A. Yes.
Q. You were on duty at that time?
A. Yes.

Q. What time were you supposed to be at work?

A. Around 7:30.

Q. What time are you supposed to leave?

A. Around 11:30.

Q. You didn't have any fixed schedule for Sunday morning?

A. We didn't have any set schedule to get there.

Q. Who was present? What office were you in at the time?

A. I was in the Trainmaster's Office.

Q. That is at the L&N Passenger Station?

A. Yes, adjacent to the Passenger Station.

Q. Adjacent to the Passenger Station down here on Morris Avenue?

A. Yes.

Q. How did you hear the rumor on that occasion?

A. We were in the Trainmaster's Office and the Trainmaster asked me if I had heard any rumors of the strike, and I told him that I didn't know of any, and he mentioned that he had heard that they were going to walk out.

Q. Who was this gentleman that told you?

A. Trainmaster Grimes.

Q. Trainmaster Grimes?

A. Yes, sir.

Q. Can you give us his full name?

A. R. L. Grimes.

Q. Mr. Woelde, was Mr. Grimes on duty at that time?

A. Yes, sir.

Q. Now, you have given us two occasions that you have heard of before the walkout occurred.

A. Yes, sir.

Q. Did you hear that before Sunday morning, did you hear any rumors?

A. No.

Q. Who was present when Mr. Grimes told you this?

A. To the best of my knowledge Mr. Grimes and I was in the office by ourselves.

Q. Did Mr. Grimes tell you where he had heard it?

A. No, sir, he didn't say.

Q. Did he tell you when he had heard it?

A. No.

Q. When Mr. Grimes told you that he had heard a rumor of a walkout, did he tell you when it was supposed to occur?

A. He said he didn't know.

Q. Did you tell anybody with the L&N Railroad what Mr. Grimes told you?

A. No.

Q. You didn't call—who was your immediate superior at that time?

A. Grimes was at that time.

Q. Did you tell Mr. Kirchner anything about it?

A. No, sir.

Q. Was he down there?

A. I don't know. I don't remember seeing him that morning.

Q. What did you do when you left, go on home?

A. Go on home.

Q. Getting back to this mysterious telephone call, just what did this man say to you? After you picked up the phone and said "Hello", what did he say then?

A. He asked me if that was Mr. Woelde, and I said yes, and he asked me "Have you heard any rumors of a walkout?", and I told him no. I didn't know who it was.

Q. Not knowing who it was you didn't want to tell him you had heard it that Sunday morning?

A. That's right.

Q. What did he say then?

A. He said he had heard they were going to walk-out, but he didn't know when.

Q. That he didn't know when?

A. Yes.

Q. Now, this was at about 4:00 o'clock Sunday afternoon, is that correct?

A. It was in the neighborhood of 4:00 to 5:00 o'clock. It was getting in the late evening.

Q. Is that all he told you?

A. That's all.

Q. Did you ask him who it was?

A. Yes.

Q. What did he tell you?

A. He didn't answer, he hung up.

Q. Had you ever heard that voice before?

A. To my knowledge, no.

Q. Have you ever heard that voice since?

A. No.

Q. Did you call anybody with the L&N Railroad after you got this mysterious telephone call?

A. No.

Q. Did you see Mr. Ben Mitchell that Sunday afternoon at any time?

A. No.

Q. Did you go about the premises of the L&N Railroad at any time?

A. No.

Q. When was the first time you knew there had been a walkout?

A. When I got up next morning at approximately 6:00 a. m., I looked out my kitchen window at the powerhouse gate, which I could see from my house. And when I saw several men down there in the

neighborhood of 20 or 30, why I suspected that is what had taken place.

Q. Did anybody give you any instructions on Friday, Saturday, or Sunday what to do in the event of a walkout?

A. No.

Q. You knew that there was likely to be a walkout some time around that time, didn't you?

A. No.

Q. All you knew about it was this rumor that Mr. Grimes told you about, and asked you about on that Sunday morning, and what that mysterious telephone call told you Sunday afternoon, is that right?

A. That's right.

Q. Is that right?

A. That is right.

Q. Did you read about it in the morning paper?

A. I don't remember whether I read it in the morning paper or not.

Q. You don't remember whether you did or not?

A. I read the paper. I don't remember if I read about the strike. I don't even remember—

Q. You don't remember whether the neswpaper had any articles about this work stoppage?

A. They may have. I don't remember reading it.

Q. About 2,500 men being out of work, you don't know whether it was in the newspaper or not?

A. No.

Mr. Taylor:

I believe that's all, Mr. Woelde. Thank you very much.

(Witness excused.)

Mr. Simpson:
Call Mr. Simrell.

Mr. Gibson:
May this witness be excused?

Mr. Pettus:
If he is on call. I don't know whether we can excuse him or not.

Mr. Gibson:
His place of duty is Mobile.

Mr. Taylor:
We might discuss it a little bit later.

The Court:
You will have to stay around.

H. T. SIMRELL, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:

Q. Mr. Simrell, will you state your name to the jury, please?

A. H. T. Simrell, S-i-m-r-e-l-l, a hard name to remember.

Q. Talk out loud like you are talking to the furthest man away from you on the jury.

A. Simrell, S-i-m-r-e-l-l. I have to spell it most of the time.

Q. What is your address, where do you live?
A. At Inglenook, 3916 41st Avenue North.
Q. How long have you lived here in Birmingham?
A. Ever since '23, 1923.
Q. Who do you work for?
A. L&N Railroad.
Q. How long have you worked for them?
A. 38 years.
Q. What do you do?
A. I am a locomotive engineer right now.
Q. Yes, sir. Were you a locomotive engineer in October, of last year.
A. Yes, sir, I was.
Q. And also in August, of last year?
A. Yes, sir.
Q. Were you a locomotive engineer in March, April, and May, of last year?
A. Yes, sir.
Q. For the L&N?
A. Yes, sir.
Q. Here in Birmingham?
A. Yes, sir.
Q. All right. Do you remember Sunday night, October 23, last year?
A. Yes, sir, I do.
Q. What were you doing say along about 9:00 o'clock, 8:30 to 9:00?
A. We was on the spot right there at the time.
Q. Were you on the job?
A. Right on the job, yes, sir.
Q. You were on the second shift?
A. Second shift, yes, sir.
Q. Went on duty at 3:00 and got off at 11:00, is that right?
A. Well, we was relieved at 9:00, supposed to get off at 11:00.

Q. I mean the regular second shift is from 3:00 to 11:00, is it?

A. Yes, sir.

Q. Was your job in the Yard or outside of the Yard?

A. In the Yard.

Q. It was a switching job?

A. Yes, sir.

Q. Who was your fireman?

A. Raymond Thomas.

Q. Raymond E. Thomas?

A. Thomas.

Q. Did anything unusual happen?

The Court:

Did I understand you to say foreman or fireman?

Mr. Simpson:

Fireman.

The Court:

Fireman?

Mr. Simpson:

Yes, sir.

Q. Did anything unusual stop or interrupt your work that night?

A. Yes, sir, it did.

Q. Where were you when that first occurred?

A. We was standing at, the engine was just a little south of the shack.

Q. A little south of the shack?

A. Yes, sir.

Q. Maybe some of the jury doesn't understand what you mean.

A. Yes, sir.

Q. There is what you call the North Yard there at Boyles, isn't there?

A. South end of the North Yard.

Q. South end of the North Yard?

A. Yes, sir.

Q. There is a little shack there?

A. Yes, sir.

Q. Where you can get in out of the rain?

A. Yes, sir.

Q. And I believe there is a telephone in there, isn't there?

A. Yes, sir, a telephone.

Q. You say this interruption occured near the shack?

A. Yes, sir.

Q. At the south end of the North Yard?

A. Yes, sir.

Q. Were you on the engine when this occurred?

A. No, sir.

Q. You were not?

A. I was off.

Q. Were you on the ground?

A. Yes, sir.

Q. Or were you in the shack?

A. In the shack.

Q. You were in the shack?

A. Yes, sir.

Q. Where was your fireman?

A. He had went down to the tower about a block away to call the Local Chairman to see if he could get anything on the strike.

Q. Local Chairman?

A. Yes, sir.
Q. Who was the Local Chairman?

Mr. Pettus:
We object to any testimony about this man a block away, may it please the Court.
Q. Had he told you where he was going?

The Court:
I sustain the objection.

A. Yes, sir.

Mr. Pettus:
We object, hearsay, and move to exclude the answer.

The Court:
All right, I sustain the objection. That is excluded from your consideration, gentlemen.

Q. Was your fireman there with you at the time?
A. No, sir, he was not.
Q. He had gone somewhere, had he?
A. Yes, sir.
Q. That was Mr. Thomas?
A. Yes, sir.
Q. Was there anybody else there with you at that time?
A. There was several in the shack when this thing happened.
Q. All right. Did somebody come up there?
A. Yes, sir.
Q. Who was it?
A. Mr. Hall, M. L. Hall.

Q. Mr. M. L. Hall?
A. Yes, sir.
Q Do you see him here in the Courtroom?
A. Yes, sir, he is over there, there he is, right over there.
Q. Sitting over there?
A. Yes, sir.
Q. He is one of the Defendants in the case?
A. Yes, sir.
Q. Mr. Hall came up here?
A. Yes, sir.
Q. Did he say anything to you?
A. Well, he called me on the outside of the shack and asked me where my fireman was, and I told him. And he said "Tell him to get out of here right now", and I asked him what was they doing, pulling a wildcat strike, and he said—and then I asked him did they have anything on paper on it, and he said "No, just tell him what I said", and turned and walked on.

Mr Simpson:
Now, Your Honor, this may be a little bit out of sequence, but it will save bringing him back in rebuttal.

Q. Did he say anything to you at that time about filing a saw for him?
A. No, sir, he never said anything about no saw.
Q. There wasn't any saw mentioned between you at that time?
A. No, sir.
Q. Where did he go when he finished making that statement to you?
A. He went I would say north. I never watched him at all.

Q. He left you?
A. Yes, sir, he left me.
Q. Did your fireman ever come back to you?
A. Yes, sir, he came back.
Q. Did you say anything to Mr. Thomas?
A. I told him.
Q. The fireman—

Mr. Pettus:
We object to anything he said out of the presence of the Defendant as hearsay, any conversation between Simrell and Thomas, we object to it as hearsay.

Mr. Simpson:
All right, I'll put it this way.

Q. Did you repeat to him—

The Court:
I sustain the objection.

Q. —the message that had been given to you?

Mr. Pettus:
We object to that as hearsay.

The Court:
Well, overruled. He hasn't called for the contents of the message.

Q. Did you repeat the message that Hall had told you to tell Thomas?
A. Yes, sir.

Mr. Pettus:
We renew our objection on the same ground.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. What was your answer?
A. Yes, sir.

Mr. Pettus:
We move to exclude the answer.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Did you repeat it truthfully?
A. Yes, sir.

Mr. Pettus:
We object to that as hearsay.

Mr. Simpson:
All right.

The Court:
Sustained.

Mr. Simpson:
All right.

Q. Afer you repeated that message to Mr. Thomas what did you do?

Mr. Pettus:
We object again as making an assumption that may have—

Mr. Simpson:
That he did something?

Mr. Pettus:
We object on the ground it is hearsay.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Answer the question, please, sir.
A. What was the question?
Q. Well, the question was after you had repeated that message to Mr. Thomas what did you do.

Mr. Pettus:
We object on the same ground.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. The Court said you could go ahead and answer.
A. We just stood around there a few minutes.

Mr. Pettus:
We move to exclude the answer on the same ground.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. After you stood around there for a few minutes, did you stand far from or close to your engine or where did you stand?
A. Right up at the engine, on the running board.
Q. You stood around your engine?
A. Yes, sir.
Q. Did anyone else join you there?
A. Well, there was a few walking around there.
Q. Did anybody else come through the Yard or say anything to you all there?
A. Well, nothing except someone came along and said the strike was on, and the roundhouse was closing down, and "Let's go", so we just hung around.
Q. You didn't go then?
A. No, sir.
Q. Who was it that came by and said that in your best recollection?
A. I don't remember. I couldn't see, it was dark
Q. Which way was he headed?
A. They was a crowd headed towards the Yard Office.
Q. Going up into the Yard?
A. Yes, sir.
Q. That is headed north?
A. Yes, sir, coming north.
Q. Of course, it was at nighttime?
A. Yes, sir.
Q. Was it?
A. Yes, sir.

Q. This was at nighttime?

A. Yes, sir, it was dark.

Q. You say a crowd went through going up in the Yard?

A. Yes, sir.

Q. And some voice out of the crowd said to you "The strike is on", and "Get out"?

A. Yes, sir.

Q. Did they say anything else?

A. No, sir, they just kept moving on.

Q. Moving up into the Yard?

A. Yes, sir.

Q. Did you have any judgment as to who the man was that said that?

A. No, sir, I do not.

Q. Did you leave at that time, you and Mr. Thomas, your fireman?

A. No, sir, I did not.

Q. How long did you stay around there then?

A. Well, it was another crowd kind of came back. Some fellow over in the crowd hollered out, said "You better get out of here, there'll be a gang in here to put you out." so I said "We'll close the engine down and get on out."

Q. So you and Mr. Thomas then did what?

A. Closed, shut the engine down and left.

Q. On that second call do you have any judgment as to who said that?

A. I just couldn't see him.

Q. You heard his voice?

A. Yes, I heard his voice.

Q. In your best judgment whose voice was that?

A. It sounded like Claude Myrick.

Q. Claude Myrick?

A. Yes, sir.

Q. Was he a fireman?
A. Supposed to be.
Q. He was not working at that time though, he was walking around through the Yard?
A. I don't know whether he was working on the job or not.
Q. Anyway, in your best judgment Claude Myrick called out to you "You better get out of here now, or somebody will come in here and put you out"?
A. It sounded like his voice.
Q. It sounded like his voice?
A. Yes, sir.
Q. Where did you go then?
A. We shut the engine down and went on out by the Yard Office, on out the gate.
Q. And went out the gate?
A. Yes, sir.

Mr. Simpson:
You can have the witness. But, before I turn you over let me ask you this.

Q. You are familiar with the three or four gates that go into the L&N Yard out at Boyles there, aren't you?
A. Yes, sir.
Q. Well now, the powerhouse gate is the one nearest to Birmingham, is that right?
A. That's the one I went out, by the powerhouse.
Q. By the powerhouse?
A. Yes, sir.
Q. Then the Master Mechanic's gate is in the middle?
A. Yes, sir, it is over to the left.
Q. Then the roundhouse gate is the one furthest from Birmingham?

A. Yes, sir.

Q. All right. Rex's Barbecue is over on the right hand side of Vanderbilt Road as you go away from Birmingham?

A. Yes, sir.

Mr. Simpson:

That's all, I just wanted to ask that question to show that map is incorrect.

The Court:

That map is turned upside down.

Mr. Simpson:

That map is evidently turned upside down, yes, sir.

Cross Examination.

By Mr. Pettus:

Q. Mr. Simrell, you have been working for the L&N Road 38 years?

A. Yes, sir.

Q. And what other business are you engaged in?

A. I am not in any business. I've got a hobby shop.

Q. A hobby shop?

A. Yes, sir.

Q. What do you do there, repair shoes?

A. Yes, sir.

Q. Repair saws?

A. I am trying to learn how to repair them.

Q. Learn how to do it?

A. Yes, sir.

Q. You are familiar with the Rule P of the Railroad, L&N Railroad, that says you can't have any other business, aren't you? You are familiar with that Rule?

A. Well, I—

Mr. Simpson:
I ob ct to that.

The Court:
What is the materiality of that?

Mr. Pettus:
I want to show his interest, may it please the Court, whether the railroad officials would criticize him about it.

The Court:
I overrule the objection.

Mr. Gibson:
We except.

Q. Have any of the railroad officials ever taken that up with you about any of your other businesses?
A. No, sir.
Q. They have not done that?
A. No, sir.
Q. Have you made any report about it to them?
A. I guess they do.
Q. Do they know about it?
A. I suppose they do.
Q. You suppose they do.
A. Yes, sir.
Q. Now, you have sharpened saws for Mr. Hall, haven't you, Mr. Simmreli?
A. Yes, sir.
Q. Mr. M. L. Hall?
A. A couple, yes, sir.
Q. You have done that?
A. Yes, sir.

Q. And at about this time in October, of '55, you sharpened some for him, didn't you?

A. Well, it was just before the strike.

Q. Just before it or just about that time, wasn't it?

A. Yes, sir.

Q. At about that time of the nighttime that you testified about on Sunday, October 23, about what time was it that you first saw Mr. Hall?

A. About 9:15.

Q. It was 9:15?

A. About 9:15.

Q. Are you reasonably positive about that time?

A. Yes, sir.

Q. As that being the correct time when you first saw him?

A. Yes, sir.

Q. When you had your conversation with him there, did he mention anything about the saws, either that you had sharpened for him or some that he wanted you to sharpen for him?

A. No, sir, he didn't.

Q. He did not do it?

A. No, sir.

Q. Now, after your conversation there with Mr. Hall, how long did you stay there in all? How long was it before you moved off of the Company premises?

A. Well, I would say just a few minutes, 10 or 15 minutes.

Q. 10 or 15?

A. Something like that.

Q. How long was it after your conversation with Mr. Hall that you heard some other voice in the dark saying something about a strike being on?

A. About five minutes.

Q. About five minutes?
A. Something like that.
Q. About that?
A. Yes, sir.
Q. Where did that voice come from?
A. Over in the crowd.
Q. Could you identify that voice?
A. No, sir.
Q. Do you know whose voice it was?
A. No, sir, I wasn't paying too much attention to it.
Q. About how far was that voice away from you?
A. It was, oh, I would say 30 or 40 feet.
Q. 30 or 40 feet?
A. Yes, sir.
Q. But after your conversation with Mr. Hall you were still there?
A. Yes, sir.
Q. That's right, is it?
A. Yes, sir.
Q. At the same place?
A. Yes, sir.
Q. Or about the same place he talked to you?
A. Yes, sir.
Q. Then you heard the next voice about five minutes later, is that right?
A. Something like that.
Q. How much longer did you stay there before you heard another voice?
A. Well, just a few minutes.
Q. Five or ten minutes?
A. Oh, something like that, five minutes.
Q. Where did the other voice come from?
A. It was almost the same direction, just—
Q. Almost the same direction?

A. Yes, sir.

Q. Now, were the lights on out there at that time?

A. No, sir, no lights.

Q. Was it dark out where you were?

A. Dark, yes, sir.

Q. What kind of clothes was the last man that yellled out, what kind of clothes was he wearing?

A. I couldn't see him.

Q. You couldn't see him at all?

A. No, sir.

Q. You don't know whether he was white or colored then?

A. Well, no, sir, I don't think there was any colored people out there.

Q. You don't think there were any colored people out there?

A. I don't believe so.

Q. Well, you think it is a white man then?

A. Yes, sir.

Q. But you couldn't see him, is that right?

A. Yes, sir, I couldn't see him.

Q. What is the basis for your judgment that it was Mr. Myrick?

A. Well, I have heard Mr. Myrick's voice.

Q. You have heard Mr. Myrick's voice?

A. Talking to him.

Q. Was he working there near you?

A. I don't know whether he was working or not. I don't know that he was out there.

Q. Mr. Simrell, have you had some conversation in regard to this case with a Mr. Bobey, an ex-FBI Agent?

A. Yes, sir.

Q. Is he in the Courtroom now?

A. Yes, sir, yes, sir.

Q. Is he an L&N employee now?
A. I don't know. He told me he wasn't.
Q. What did he tell you?
A. He didn't tell me he was.
Q. He didn't tell you he was?
A. No, sir.
Q. Did he say anything to you about that being Claude Myrick's voice there?
A. No, sir.
Q. He didn't mention that to you?
A. No, sir.
Q. Do you see Mr. Claude Myrick here in the Courtroom?
A. No, sir, I don't.
Q. Do you know whether or not he is a Defendant in the case?
A. I don't know a thing about it.
Q. In fact, you know he is not a Defendant in this case, don't you?
A. I don't know anything about it.
Q. Now, when you walked out, about what time was it that you actually left the Company property?
A. Well, the first I realized the time it was about 9:40.
Q. 9:40?
A. Or 45, something like that.
Q. Was Mr. Ben Mitchell in the crowd there with you as you walked out?
A. Well, all I seen of Mr. Ben Mitchell, I saw it was him, we passed the Yard Officer, and he was, they said it was him, coming out the door.
Q. When you passed the Yard Office Mr. Ben Mitchell was coming out the door?
A. Yes, sir.
Q. Is that right?

A. That's right.

Q. Was Mr. Mitchell by himself?

A. No, sir, there was somebody else just walking along with him, or in the doorway.

Q. Somebody else was with Mr. Mitchell, is that right?

A. Seemed to be. Everything was dark.

Q. Do you know the clerks there in his office with him?

A. I don't know their names, I just know their faces.

Q. In the group that Mr. Mitchell was walking out with, how many men were in the group?

A. There was just two in the door.

Q. Just two?

A. Yes, sir.

Q. All right.

A. There was several on the outside.

Q. Several more outside?

A. Yes, sir.

Q. Did you join up with Mr. Mitchell's group or how far were you away from them?

A. I just joined the crowd, and followed them on out.

Q. Joined the crowd and followed them on out, is that right?

A. That's right.

Q. Were any of the clerks that you reco nize there with Mr. Mitchell?

A. No, I never paid any attention to them at all.

Q. Did you pay any attention to anybody else that was with him there?

A No, sir, never looked at him any more.

Q. Can you name any other men that were with Mr. Mitchell there?

A. No, sir, I never paid them no mind at all.
Q. You didn't pay any attention to them?
A. No, sir.
Q. And it was about 9:40 when you got out of there, is that right.
A. When I got on the outside.
Q. Mr. Mitchell walked out with you?
A. I didn't see Mr. Mitchell. I don't know which way he went, or whether he went out or not.
Q. All you saw him was at the Yard Office?
A. Yes, sir.
Q. But you saw him there at the Yard Office about 9:35, is that right?
A. Something like that. I taken it to be him.
Q. In your best judgment it was him, wasn't it?
A. Yes, sir.

Mr. Pettus:
That's all.

Mr. Simpson:
That's all. Come down.

The Court:
Do you have any further need for this witness?

Mr. Simpson:
No, sir. We would like to excuse him if we can.

Mr. Pettus:
We will excuse him.

The Court:
You may be excused from further service.

(Witness excused.)

Mr. Simpson:
Mr. R. E. Thomas.

R. E. THOMAS, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Gibson:

Q. Is this Mr. R. E. Thomas?

A. Yes, sir.

Q. Where do you live?

A. 4249 Jackson Street, Birmingham 7, Alabama.

Q. By whom are you employed?

A. Louisville & Nashville Railroad.

Q. Were you employed by the Louisville & Nashville in October, of 1955?

A. Yes, sir, I was.

Q. What was your occupation or position?

A. Locomotive fireman.

Q. Do you remember an occurrence on Sunday night when there was a strike at Boyles?

A. Yes, sir.

Q. Were you at work?

A. Yes, sir.

Q. At the time it began?

A. Yes, sir.

Q. Is that the second shift?

A. Yes, sir.

Q. Who was your engineer on your crew?

A. Mr. H. T. Simrell.

Q. What was the first that you heard about any strike, or wildcat strike or labor dispute, labor trouble of that nature?

A. Well, I would say about 8:45 p. m. on this particular day. A fireman on another job got up on my engine and asked me if I had heard anything regarding the strike. I told him that if he knew anything about it that he knew more than I did, that I hadn't heard a word.

Q. Who was that man?

A. That was N. R. Lovelady.

Q. Now then, what, if anything, did you do after having that conversation with Mr. Lovelady?

A. Well, another younger fireman and myself became quite alarmed at the rumors.

Mr. Pettus:

We object to that.

The Court:

I sustain the objection.

Mr. Pettus:

And move to exclude the answers.

The Court:

That is excluded gentlemen, that he became quite alarmed.

Q. Just state what you did.

A. Can I continue?

Q. Yes, sir, just tell what you did.

A. I became alarmed at the rumor that had been going around—

Mr. Pettus:

We move to exclude that. That is the same thing.

A. —a few minutes.

Mr. Pettus:

He repeated the same words, and we move to exclude that.

The Court:

I didn't understand what you said there last.

A. I said the younger fireman became alarmed.

The Court:

I sustain the objection to that. You can't testify to that.

The Witness:

In other words, he was—his anxiety, could I use that?

Mr. Pettus:

Well, we would prefer you not to use anything. Just leave out the embroidery and tell what happened.

A. Well, he came to me and asked me what to do. I told him I didn't have any information, and therefore I couldn't give him any advice. My being older in seniority, he was looking to me for some suggestions, and I told him that the only thing that I could suggest was that we go to the FY tower where there is a city phone, and that I would try to locate some member of the Firemen's Organization, officers or otherwise, that might be able to give us some worthwhile information. And this we did.

That happened at about five minutes of 9:00 I would say on this night. We went to FY tower and I called Mr. Otts home and got no reply, and no answer.

I called Mr. Jim Brown, Jr. and I didn't get any reply from him, and I then sought to call the Rex's Barbecue where the men generally as a rule congregate. And I don't know whether I talked to the propriety or not, he didn't give me his name.

And I asked him if Mr. Otts was around, and he said he would look, and he went outside and he came back and told me Mr. Otts wasn't near, that he couldn't reach him.

So I gave Mr. Garst the information that I had received, I told him that I didn't know of anything else to do, that it was more or less up to the individual to decide for himself, that I was in no position, either as fireman or as a member of a Labor Organization, to tell him what to do.

Q. All right, sir, what was the next thing you did?

A. Then we went back to my engine.

Q. Did you have a conversation with Mr. Simrell at the engine when you got back?

A. It seems that I met him at the footboard, back footboard of the engine when I got back.

Q. Did he give you any message or repeat any message?

A. He said there was a message for me.

Mr. Pettus:

Wait a minute, let me make an objection. We object to that as hearsay, out of the presence of any Defendant, incompetent, irrelevant, and immaterial.

The Court:

I sustain the objection to the centents of any message.

Mr. Gibson:
I asked him I believe—

The Court:
Or conversation.

Mr. Gibson:
—if he received any message.

The Court:
He started to telling about the conversation.

Mr. Gibson:
Yes, sir.

Q. Mr. Thomas don't answer my question by saying what the message was. My question was whether or not you received a message from Mr. Simrell.
A. I did get a message.

Mr. Pettus:
The same objection on the same ground.

The Court:
Overruled.

Mr. Pettus:
We except.

A. I did get a message.

Mr. Pettus:
We move to exclude it on the same ground.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. What, if anything, did you do after that? Just tell the jury.

A. Well, during the conversation of Mr. Simrell and some other men that were gathered around our engine to see what decision we were going to make, there was another group of men that came by, some I would say 25 yards away.

Q. In what direction were they going, if you remember?

A. I would say in a northeasterly direction, from FY tower towards the Main Yard Office.

Q. Could you see them?

A. It was very poorly lighted and I couldn't identify them individually.

Q. Now what, if anything, was said by anyone in that group to you?

A. There was some outcry, or I would say shouting probably that "You better get out of here, or we'll be back in a few minutes and throw you out."

Q. Was that said by more than one person or more than one time?

A. I would say it was a mingling of voices.

Q. Did you recognize anyone in that group of men from which this shouting or this outcry came?

A. At the particular minute of the shouting I did not.

Q. You don't know who it was that said it?

A. I do not know, I couldn't ascertain any individual's voice.

Q. Can you identify anyone who was in that group?
A. Yes, sir.
Q. Who is the man?
A. Mr. Bruce Barnett.
Q. How long have you known Mr. Bruce Barnett?
A. Some 13 odd years, however long we both have been employed by the Railroad.
Q. You both went to work about the same time?
A. Yes, sir.
Q. And you have known him all that time?
A. Yes, sir, some few months difference in our seniority.
Q. What did you do after this outcry, if anything?
A. Well, Mr. Simrell and I again got in a conference, since it seemed more or less the debate was centered on the engine crews.

Mr. Taylor:
We object to that, may it please the Court. We ask the witness be instructed not to say what he said.

The Court:
Tell what you did, Mr. Thomas, other than relate a conversation.

The Witness:
Well, I immediately left.

Q. Where did you go then?
A. I went home.
Q. Did you stay at home?
A. No, sir.
Q. Where did you go from there?
A. I got in my car and drove to the Rex's Barbecue.

Q. Did you see any of the Defendants in this case, these men who are sitting around the Courtroom, in the neighborhood of the Rex's Barbecue?

A. I think I saw one, yes, sir.

Q. Which one?

A. Mr. C. L. McCutcheon.

Q. You knew him before that?

A. Yes, sir.

Q. How long have you known him?

A. Well, he was in active service I believe at the time I was employed.

Q. Where exactly did you see C. L. McCutcheon standing?

A. Opposite the Rex's Barbecue, on the opposite side of what they call Pinson Pike, and adjacent to the roundhouse office, standing at the, I would say east end of what they call the foot log, or kind of a small bridge across a deep ditch.

Q. Is that an entrance put there for people to go in and out of the Railroad Company's premises?

A. I would think so.

Q. Is it wike or narrow?

A. Narrow; I would say 4 feet wide.

Q. You saw C. L. McCutcheon standing at the street end of that?

A. Yes, sir, not on the property.

Q. Did you say anything to him?

A. No, sir.

Mr. Gibson:

Take the witness.

Cross Examination.

By Mr. Pettus:

Q. Mr. Thomas, where was this location that you saw Mr. McCutcheon? I didn't get it.

A. I beg your pardon?

Q. Where was this place that you saw Mr. McCutcheon that evening?

A. Adjacent to the Rex's Barbecue on the Railroad side of Pinson Pike.

Q. On the Pinson Pike?

A. Yes, sir.

Q. Now, turn around there. With reference to the powerhouse and the Master Mechanic's gate, locate it on the sketch, if you can put where it was?

A. This is Rex's, this would be considered Pinson Pike (indicating).

Q. Pinson Pike?

A. Yes, sir. And here is the roundhouse engine dispatcher's office, and there is a small foot log there.

Q. That goes across there?

A. That joins the L&N property with the city property.

Q. With the city property?

A. Yes, sir.

Q. He was standing on the city property over there?

A. Yes, sir, he was standing on the city property.

Q. Have you ever been an official of the L&N, Mr. Thomas?

A. Sir?

Q. Have you ever been an officeal?

A. Temporary appointment in 1946.

Q. What was that?

A. Diesel Fuel Instructor for two months.

Q. In October, of 1955, you were a fireman?

A. Yes, sir.

Q. Were you a member of the Firemen's Organization?

A. No, sir.

Q. You were not a member of the Firemen's Organization?

A. No, sir.

Q. Were you a member of any of the Brotherhoods at that time?

A. Brotherhood of Locomotive Engineers.

Q. Brotherhood of Locomotive Engineers?

A. Yes, sir.

Q. That is a Labor Organization of railroad employees like the Firemen is, isn't it?

A. Yes, sir.

Q. Now, at about what time was it that you made this call from the FY tower?

A. I would say five minutes of 9:00.

Q. And from the time until you left the Company property, how much time transpired there?

A. I would say 15 minutes.

Q. 15 minutes?

A. Yes, sir.

Q. Were you off the Company property at about 9:15?

A. At 9:15 I would be honest in saying.

Q. As being off the Company property?

A. Yes, sir.

Q. Did you go out with Mr. Simrell?

A. To a certain point, in front of the Yard Office. When he went out the main Vanderbilt gate, I branched off to the left, down the Tin Shop, and out the Master Mechanic's gate.

Q. Did you see Mr. Ben Mitchell when you went out?

A. No, sir, I did not.

Q. You did not see Mr. Mitchell?

A. No, sir.

Q. The only group of men that you heard yelling anything about a strike or work stoppage was about 75 feet away from you?

A. Something of that kind.

Q. Were the lights on where you were, or was it dark?

A. The very particular point where our engine was located, it was I would say dark.

Q. After that outcry, as you called it, occurred, did you just walk over and join that group?

A. No, sir.

Q. You didn't walk over and join them?

A. No sir.

Q. Which way did that group go?

A. Northeast, towards the Main Yard Office.

Q. Then did you follow that group on in?

A. Not at that particular minute.

Q. Not at that particular minute?

A. No, sir, it was some 15 minutes later before I left.

Q. It was 15 minutes later?

A. Yes, sir.

Q. Before you left?

A. Yes, sir.

Q. In other words, from the time that somebody in that group called out something about a strike or work stoppage, it was 15 minutes before you saw, you could see any member of that group, is that right?

A. No, sir, I could see the group within three minutes I would say after they made the outcry.

Q. You could see the group within three minutes after they made the outcry?

A. Yes, sir.

Q. How many were in the group?

A. I would say from 8 to 15 men. I didn't ascertain or didn't count them.

Q. 8 to 15 men?

A. Yes, sir.

Q. Did they have their work clothes on?

A. Some did and some didn't.

Q. Some did and some didn't?

A. Yes, sir.

Q. You have known Mr. Barnett for how long?

A. Since his employment and my employment. I would say 13 years or better.

Q. 13 years?

A. Yes, sir.

Q. You have known him off and on, and known him well, have you?

A. Well, as a fellow employee, yes.

Q. As a fellow employee?

A. Yes.

Q. You don't identify his voice as being the one that cried out, do you?

A. No, sir, I do not.

Mr. Pettus:

That's all.

Mr. Gibson:

Mr. Thomas, one more question.

Re-Direct Examination.

By Mr. Gibson:

Q. When you left that Yard on Sunday night and walked off your job, were you walking off in protest against the taking off of the hostler helpers jobs?

Mr. Pettus:

We object to that.

A. No, sir.

The Court:

I sustain the objection.

Mr. Gibson:

We except.

Q. Were you scared?

Mr. Pettus:

We object.

The Court:

Overruled.

Q. What was your answer?

A. Yes, sir.

Mr. Pettus:

We move to exclude the answer.

The Court:

Overruled.

Mr. Pettus:

We except.

Q. What was your answer?
A. I certainly was.

The Court:
Will you excuse this witness?

Mr. Pettus:
We will be happy to excuse him.

(Witness excused.)

Mr. Simpson:
Mr. Houts.

E. E. HOUTS, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Smith:
Q. Is this Mr. Houts?
A. Yes, sir.
Q. That is E. E. Houts?
A. That's right.
Q. Where do you live?
A. 536 South 56th Street.
Q. Birmingham?
A. Woodlawn, Birmingham.
Q. Who are you employed by?
A. L&N Railroad.
Q. Were you employed by them in October, of 1955?
A. Yes, sir.
Q. What job were you doing at that time?

A. Engineer.

Q. An engineer?

A. Engineer and fireman during the year. I was running at that date, yes, sir.

Q. Are you operating as an engineer now?

A. Yes, sir.

Q. Do you recall an occasion in October, 1955 when there was a strike out there for about three days on the Railroad at the Boyles Yard?

A. Yes, sir.

Q. I believe that started on Sunday, do you recall that?

A. Yes, sir.

Q. Had you heard anything about the abolishing of the hostler helpers jobs prior to that Sunday?

A. Yes, sir.

Q. Where had you heard that?

A. I had heard it at the roundhouse. They had discussed it all over the roundhouse, that is among the men in general.

Q. Had you had occasion to discuss it with any individual that you can recall now?

A. Yes.

Q. Who was that?

A. Letchman.

Q. Mr. Letchman. Is he here in the Courtroom?

A. Yes.

Q. Can you point him out here?

A. Yes, he is.

Q. That is Mr. Letchman, the gentleman there?

A. Yes, sir.

Q. Back in the corner there?

A. Yes, sir.

Q. Where did you have this conversation with Mr. Letchman?

A. In the negineers' andn firemen's washroom?
Q. In the engineers' and firemen's washroom?
A. Yes, sir.
Q. Where is that located?
A. That is just—it is at Boyles, just out from the roundhouse.
Q. Near the roundhouse?
A. Yes, sir.
Q. All right, now, what did Mr. Letchman say to you at that time?
A. He just said that—

The Court:
When was this?

Mr. Smith:
I propose to pin him down.

Q. What date was this, the best you can tell us now, what is your recollection as to the time?
A. It was a couple of days after I had first heard of the abolishing of these jobs. To my recollection I couldn't definitely say and state the day of the week. It was a couple of days before the actual strike.
Q. A couple of days before the Sunday?
A. Yes, sir.
Q. Tell us what Mr. Letchman said at that time.
A. He just said that they were contemplating on abolishing the jobs, and that the next move that they would make would probably be to take the firemen off of the engine. It was the first move, it looked like, that they was making, and that they wasn't going to allow it.
Q. He said they were not going to allow it?
A. Yes, sir.
Q. Did he tell you what would be done to stop it?

A. No, sir, he didn't say any definite action.

Q. Did he tell you who he was talking about by using the word "they"?

A. No, sir.

Q. Did you understand what he meant by that?

Mr. Pettus:

We object to what he understood.

The Court:

I sustain the objection.

Q. Mr. Letchman is a fireman, is that correct?

A. Yes, sir.

Q. Is that what he does?

A. Yes, sir.

Q. Is he a member of the Firemen's Local?

A. Now—

Q. Do you know?

A. I have no knowledge of who the members are of the Firemen.

Q. Now, on Sunday night were you working a regular job?

A. I was working an extra Yard job off of the engineers pool board.

Q. What time had you gone on duty?

A. I went on duty at 3:00 o'clock that afternoon.

Q. That would have been the shift that ran from 3:00 until 11:00?

A. 3:00 until 11:00.

Q. When you went on duty there was everything normal?

A. Yes, sir.

Q. You were working an extra Yard job?

A. Yes, sir.

Q. Is that a switching job?

A. Yes, sir, Yard switching job.

Q. Is that a job where you make up trains?

A. On this job it's what we call a bum job, work all over the Yard, transferring cars and switching up cuts. It has no specific job to do outside of just whatever the Yardmaster needs at the time. In other words, you work in any section of the Yard, within the Yard limits.

Q. A utility job, is that right?

A. Yes, sir.

Q. Did anything unusual happen while you were on that shift?

A. Up until—everything went normal up until, oh, around 9:00. Well, around 8:30 I first heard the conversation that there was going to be a work stoppage.

Q. Who did you hear that from?

A. Just general discussion of the crews I was working with, and the ones that was switching there next to us.

Q. Who was on your crew that night?

A. The only man that to my knowledge, I mean that I am positive of was the fireman. That was D. L. Smith.

Q. D. L. Smith?

A. Yes, sir.

Q. He was your fireman?

A. Yes, sir.

Q. You don't remember your train crew?

A. No, sir. I had the crew off the switchmen's Extra Board.

Q. Not men that you work with regularly?

A. Men that I didn't work with regularly.

Q. After you heard that around 8:30, heard something about there being some trouble, what happened after that?

A. Well, we worked a few minutes after that, a little while. We had first heard it, and the engines started stopping work.

Q. Other engines started stopping work?

A. Yes, sir.

Q. What area were you in at that time?

A. I was on the Huntsville Road, just in front of the Yard Office.

Q. Just in front of the Main Yard Office at Boyles?

A. Yes, sir.

Q. Did you have any cars that you were moving at that time?

A. When they first started stopping engines, we had a small cut of cars that we finished switching up after the others had stopped.

Q. Who was stopping the other engines, Mr. Houts?

A. To my knowledge there was no certain one.

Q. These other engines, were they right in the immediate vicinity where you were?

A. They would be a couple of tracks over, or back of us on the drill track. They were pulling in there and stopping.

Q. Now, what happened as far as your engine was concerned?

A. After we finished switching the cut my crew came up to the engine and asked if I was going to stop work, and I told them that I was.

The Court:

Is that your regular crew?

The Witness:
The crew that was called for my job.

The Court:
I see.

Q. All right, what next?

A. So I told them I wanted to, before I stopped, I must clear the lead or get the engine back to the roundhouse, because it had been turned over to me at the roundhouse, I would like to take it back to the roundhouse to turn it in.

Q. Can you identify anybody on that crew that you were talking to? Does that refresh your recollection about anything?

A. To my knowledge I couldn't identify anyone.

Q. Were there any people around there at that time?

A. There was lots of them, I mean switchmen.

Q. Did you see any firemen?

A. Well, outside of my crew, in other words, I had a little debate with the switchmen as to what was going to happen to my crew, and I was concentrated on getting my engine in. I don't remember any specific one outside of my own fireman.

Q. Did you hear any conversation from anybody outside of your own crew about shutting your engine down or getting it out of there? Did you hear anything said about that?

A. Well, someone, I couldn't identify them, just yelled out, says "What's he going to do, isn't he going to quit?" I told them I was ready to quit if everybody else in my crew was quitting with me, that I just wanted to get the engine in the clear, which was my responsibility.

Q. All right, sir. Now, in that group of people did you recognize anybody that you can now tell us about?

A. You mean while—

Q. In the crowd at that time, did you see anybody there that you could recognize?

A. Not before I put up the engine, no, sir.

Q. How did you put the engine up? Were you able to get it off the main lead there?

A. Yes, sir. My crew threw the switch to the No. 1 drill which is two tracks in front of the Yard Office, and I took the engine down in the clear of the main lead and shut it down.

Q. All right, sir. Now, was there a crowd of people there at that time?

A. Yes, sir.

Q. When you returned to the Yard Office?

A. Yes, sir, quite a crowd.

Q. That was immediately after you moved the engine into the drill?

A. Yes, sir.

Q. How far did you have to move that engine?

A. Oh, I guess about eight car lengths.

Q. About eight car lengths?

A. Yes, sir.

Q. All right, sir. Tell us if you can if you recognized any firemen in the crowd at that time, when you came back?

A. Yes, only two. I saw Tommy Davis.

Q. Tommy Davis?

A. T. E. Davis.

Q. T. E. Davis?

A. Yes, sir

Q. All right, sir. Who else?

A. H. M. Baum.

Q. H. M. Baum?

A Yes, sir.

Q. Do you recall how they were dressed?

A. To my knowledge I couldn't recall how H. M. Baum was dressed.

Q. What about Mr. Davis?

A. But I did notice Mr. Davis because I was close to him while the conversation was going on, and he had on street clothes. To my knowledge it was a dark brown zipper jacket, or cloth zipper jacket.

Q. He has changed his railroad work clothes then?

A. Yes, sir.

Q. Did you hear from that group any comment about any other engine or any other engine personnel who were still working?

A. Yes, sir.

Q. Tell us about that, please, sir.

A. Someone said, yelled out that R. E. Thomas didn't want to leave the engine.

Q. That is Fireman R. E. Thomas?

A. Fireman R. E. Thomas.

Q. Go ahead.

A Someone else yelled out "Well, let's go get him." But it was in the crowd.

Q. Could you identify the person that said that?

A. No, sir.

Q. Could you see who it was?

A. No, sir.

Q. That was the crowd that Mr. Baum and Mr. Davis were in?

A. Yes, sir.

Q. All right, sir. Were any other engines working after you shut yours down?

A. Not in our vicinity, no, sir.

Q. So far as you know was that the last engine working at Boyles?

A. Yes, sir, so far as I know.

Q. I will ask you when these people were there by your engine and you were having some discussions about shutting it down, I will ask you if you were scared at that time?

Mr. Pettus:

We object to that, incompetent, irrelevant, and immaterial, calls for a mental operation.

The Court:

Overruled.

Mr. Pettus:

We except.

Q. Were you, sir?

A. Well, in a sense of the word, yes.

Mr. Pettus:

We move to exclude the answer on the same ground.

The Court:

Overruled.

Mr. Pettus:

We except.

A. From previous experience with strikes, it has never been my rule to work because of the safety end of it. And it has a certain element of not being safe, and I felt I should do as the rest of them did until the thing was settled, and I came out.

Mr. Pettus:

We move to exclude the rest of the answer on the same ground, and not responsive, argumentative.

The Court:

I sustain the objection to that. That is excluded, gentlemen.

Q. I will ask you if that was the reason why you left your engine there on that drill?

Mr. Pettus:

We object to that. It calls for a mental operation.

The Court:

As to the reasons, yes, I sustain the objection.

Q. Mr. Houts, are you or have you ever been, or are you a member of the Union right now?

A. Yes, sir.

Q. Were you a member of the Union at that time?

A. Yes, sir.

Q. What Union?

A. BFLE, Brotherhood of Locomotive Engineers.

Q. All right. Have you ever been a member of the Firemen's Union?

A. Yes, sir.

Q. Have you ever been an official of the Firemen's Union?

A. No, sir.

Q. Have you ever been an official in the Engineers Union?

A. I am at present, yes, sir.

Q. You are at present an official of the Engineers Union?

A. Yes, sir.

Q. When you were making this decision to shut this engine down was this crowd near enough to be apparent and visible to you?

A. Yes, sir.

Mr. Smith:

All right, that's all. Answer these gentlemen's questions.

The Court:

All right, go ahead.

Mr. Pettus:

Shall I proceed, Your Honor?

The Court:

Yes.

Cross Examination.

By Mr. Pettus:

Q. Mr. Houts, I hand you herewith an exhibit that has been identified as Defendants' Exhibit 1, and ask that you examine that?

A. Yes, sir.

Q. Now, do you recall having seen that notice?

A. Yes, sir.

Q. Is that the abolition of the hostler helpers jobs notice that was put on the bulletin board?

A. Yes, sir.

Q. Do you recall that?

A. Yes, sir.

Q. Was it put on the bulletin board about October 19, 1955, about that date?

A. Well, I couldn't tell you exactly what day. It was somewhere in that time, yes, sir.

Q. It was roughly about a week before that walkout that you testified about occurred, wasn't it? It was about a week before the walkout, roughly, that the notice was put up?

A. Well, it wasn't to my—I mean to my knowledge, I didn't look at it up until the—after I had had my discussion in the washroom, I hadn't seen it.

Q You hadn't?

A. No, sir.

Q. In other words, that was the general discussion that you had there that called your attention to it?

A. That's right.

Q. Is that right?

A. Yes, sir.

Q. Now this abolition of the hostler helpers jobs you testified was a subject of general discussion there, wasn't it?

A. Yes, sir.

Q. And what does a hostler helper do?

A. He helps, he works with the hostler. He fuels engines, puts on supplies and sees that the engine is in good condition for service for the Company.

Q. And then with an outside helper, after—in other words, he has duties in the supply and care of the engine, is that right?

A. He puts the supplies in the cab of the engine.

Q. After that is done and the hostler is going to make an outside move, where is the hostler helper's position on the engine?

A. Left hand side.

Q. On the left hand side?

A. Yes, sir.

Q. And the hostler is on the right hand side?

A. That's right.

Q. And does the hostler helper ride on the left hand side of the engine until the move is completed, or does he have duties while the move is in progress?

A. Well, now, coming out of the roundhouse up to the roundhouse lead, he will ride—in other words, on the inside roundhouse lead it is his duty to handle that switch.

Q. His duty to handle that switch there?

A. Letting the engine in and out.

Q. And he has to get down from the engine to handle that switch, is that correct?

A. Inside switch, yes, sir.

Q. The inside switches?

A. Yes, sir.

Q. Does he handle the switches right before you get on the main line, all switches before you get on the main line?

A. From the roundhouse to the inside switch before you get to the main line, yes, sir.

Q. If he is not doing any switching duty, where is he, he rides on the left hand side of the engine, does he?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. And while riding there, does he have any duties?

A. It is his duty to—after they leave the inside switch going out on a lead, or the main line, between the inside switch and the roundhouse he usually rides the footboard, giving signals to the engineer for the move that is to be made—for the hostler, for the move that is being made.

Q. Is that the footboard on the left hand side?

A. The footboard is on the—

Q. On the front?

A. Both sides of the front and both sides of the back.

Q. Both sides of the front?

A. Yes, sir.

Q. And both sides of the back?

A. Yes, sir.

Q. And he gives signals to his hostler?

A. On the right hand side, yes, sir.

Q. Well, now, how large are those engines?

A. How large?

Q. Yes, what size are they?

A. The small ones run from two hundred to two hundred thirty thousand pounds, and we have them up to, the road engines, which get up into three hundred or three hundred fifty.

Q. The engine that a hostler moves can be of either type?

A. Or a group, yes, sir.

Q. How far out, how wide is the engine?

A. Well, I couldn't tell you exactly.

Q. Roughly, just roughly speaking?

A. It extends about the width of a—a few inches inside of the ties on each side of the railroad. In other words, it has an extension on each side of your rail of the track.

Q. Now, when the engineer is sitting on his right hand side of the engine does the works of the engine block his view on the left hand side of the train, of the engine?

A. Yes, sir.

Q. Who is now doing the hostler helper's work out there, if anybody?

A. I presume, I haven't been doing any hostling since then, but to my knowledge the laboring force is doing it.

Q. Are those the Negro laborers out there?

A. The ones that had been doing the inside hostling before.

Q. Doing the inside hostling before?

A. Yes, sir.

Q. But they don't ride the engines, do they?

A. They ride the footboard.

Q. Do they ride anywhere in the Yard?

A. None of them rides in the Yard now.

Q. They don't ride in the Yard?

A. No, sir.

Q. Mr. Houts, did you hear anyone besides Mr. Letchman make a statement that if they could abolish the outside hostler helper's jobs they could abolish the firemen's job?

A. Not any specific person that I could name. Just, that was the only conversation I had in that respect.

Q. In that line?

A. That line.

Q. You agreed with that, didn't you?

Mr. Simpson:

We object to what he agreed to.

The Court:

I sustain the objection.

Q. Did you hear any other discussion to the effect at that time that the Railroad had violated the Firemen's agreement, and violated the Railway Labor

Act in putting this notice up to abolish the hostler helpers jobs?

Mr. Simpson:
We object to that, may it please the Court.

The Court:
I sustain the objection.

Mr. Pettus:
We except.

Q. Now, Mr Houts, at what time was it that you first heard that there was any labor trouble on this Sunday evening?

A. To the best of my knowledge it was around 8:30 I heard the rumor.

Q. You heard the rumor?

A. That's right.

Q. Did you see anything that was happening at that time?

A. Not at that time.

Q. Everybody continued at work after you first heard the rumor?

A. Yes.

Q. And how long after you first heard it, you say it was about 8:30, was it, before you personally left the Company premises?

A. You mean tied my engine up?

Q. Tied your engine up and actually got off, or when did you actually get off the premises?

A. Well, I had to walk from the main—I had my car parked at the parking lot at the roundhouse, and I had to walk from the middle Yard to the roundhouse and then to the parking lot. But it was some-

where around 9:00 o'clock when I tied my engine up in the clear, and I stayed around the Yard Office for a few minutes, and then we walked on down to the roundhouse, and into the car lot.

Q. Did you see Mr. R. E. Thomas that evening?

A. No, sir.

Q. Did you see Mr. Davis?

A I did.

Q. What time did you see him?

A. It was around 9:00 o'clock.

Q. About where did you see him, where was he?

A. Standing right in front of the Yard Office.

Q. Was there anyone with him?

A. Well, there was a group of men all around.

Q. How many men were with him?

A. I don't know how many was with him, so far as him personally, but there was a large group of men just milling all around in front of the Yard Office.

Q. Large group of men?

A. Yes, sir.

Q. And he was one of them that you say that was there at that time?

A. That's right.

Q. Now, these men that were milling around the Yard Office, were there any non-operating employees there in that group?

A. To my knowledge, I couldn't tell you.

Q. Were there any clerks?

A. I don't remember seeing any.

Q. Were there any engineers?

A. The only ones I can remember was the ones that was with me.

Q. And were there any switchmen?

A. Yes, sir.

Q. Were there any firemen?

A. Well, the firemen that I remember seeing, and my fireman was the only ones that I remember seeing there.

Q. Now, at what time was it that you saw Mr. Baum there?

A. At the same time.

Q. You saw him there?

A. Yes, sir, that's right.

Q. How far was he from Mr. Davis?

A. About the distance between you and me.

Q. That is about 20 feet?

A. Well, I'm not much a judge on the footage of it.

Q. How far were you standing from those two?

A. I beg your pardon?

Q. How far were you from those men when you saw them?

A. I was within arm's length of Mr. Davis.

Q. In arm's length?

A. Yes, sir.

Q. How far were you from Mr. Baum?

A. Oh, it would be—I never did get any closer than the distance between you and me, approximately.

Q. Were the lights on there at that time?

A. Yes, sir.

Q. And can you identify any others? You say there was quite a large group of men there with him?

A. Yes, sir.

Q. Can you identify any others in the group?

A. Not to my knowledge.

Q. Did all of them have on work clothes?

A. I couldn't say.

Q. You couldn't say whether they did or not?

A. There were so many there that to my knowledge I couldn't say.

Q. At that time there was no engine running?

A. None to my knowledge.

Q. They were all closed down?

A. Yes, sir.

Q. At that time did you see Mr. Mitchell, Ben Mitchell?

A. I saw Mr. Mitchell in the office, inside the office, right after I shut the engine down. I had first stopped before that, before we had our argument about putting the engine in the clear. I walked in to call the roundhouse and asked them what they wanted me to do with the engine.

Q. You walked into Mr. Mitchell's office?

A. Into the main office, and he was sitting at the desk on the far side of the office.

Q. When you walked in there?

A. Yes, sir.

Q. You made your call, did you?

A. I did.

Q. And was it after that that you came out and moved your engine?

A. That's right.

Q. What time was it you made that call?

A. Well, it all happened around 9:00 o'clock.

Q. About 9:00 o'clock?

A. Yes, sir.

Q. But it was after that that you moved the engine?

A. It was just a few minutes, as soon as I walked out. It wasn't but about I will say three or four minutes until I started moving the engine, as soon as I told the crew.

Q. How far did you move the engine?

A. About eight car lengths.

Q. About eight car lengths, approximately that?

A. Approximately that, in the clear of No. 1 drill.

Q. And it was after that that you left the premises, is that correct?

A. That's right.

Q. Was Ben Mitchell there when you left?

A. Yes, sir.

Q. Did you see him there when you left?

A. When I—the last I saw of Mr. Mitchell he was still at the desk when I left the office. In other words, after I made my call I walked right out and got on my engine, and that was the last I saw of him.

Q. When you were on your way back out you passed the Yard Office again?

A. No, sir.

Q. You didn't see him then?

A. No, sir.

Q. In other words, the last time you saw Mr. Mitchell was after you made your phone call and after you went and moved your engine?

A. After we put the engine in the clear—

Q. Yes.

A. —we walked back to the front of the Yard Office, and that is when we had our conversation with Mr. Davis, and then from there we walked to the roundhouse and into the parking lot.

Q. At what stage was the last time you saw Mr. Mitchell?

A. Sitting at his desk after I had made the phone call.

Q. After you had made the phone call?

A. Yes.

Q. You didn't see him after you made your phone call?

A. No, sir.

Mr. Pettus:

That's all.

Re-Direct Examination.

By Mr. Smith:

Q. Mr. Houts, Mr. Pettus has asked you about various duties of the hostler's helper. The Railroad operates out there now out in the Yard, I believe the herders throw the switches?

A. That's right.

Q. Do they ride the left hand side of the engine?

A. Yes, sir.

Q. Those are duties formerly performed by the hostler helper, is that right?

A. Yes, sir.

Q. All right. You say you had parked your car down at the roundhouse area and you had to walk down there to go out that gate, is that right?

A. Yes, sir.

Q. Did you walk through the Yard then from the Yard Office to the roundhouse?

A. I had to go down the lead towards Tarrant City. We had to walk down the lead, and then down the roundhouse lead to the roundhouse.

Q. In your judgment that would be how far?

A. Oh, I would say approximately, the best of my judgment about, oh, two city blocks.

Q. About two city blocks?

A. Yes, sir.

Q. When you got down to the roundhouse did you find anybody working down there?

A. There was no one there.

Q. No one was there?

A. No one.

Q. It was deserted?

A. That's right.

Q. Mr. Houts, the herder that you mentioned there, he never rides in the cab, he is always out on the footboard, isn't that his duty?

Mr. Smith:

That's all.

Re-Cross Examination.

By Mr. Pettus:

A. When they go from Boyles to town they ride the cab.

Q. They get in the cab when they are going from Boyles to town?

A. Yes, sir.

Q. That is all the switches they throw there?

A. On the main line.

Mr. Pettus:

On the main line. All right. Thank you.

The Court:

This gentleman may be excused?

Mr. Smith:

We would like for him to be excused, yes, sir.

Mr. Pettus:
We will excuse him.

The Court:
All right, the witness is excused.

(Witness excused.)

The Court:
Gentlemen, we are going to recess for lunch until 1:30.

(Whereupon, at 12:15 p. m. a recess was taken until 1:30 p. m., of the same day.)

Afternoon Session.

1:30 P. M.

The Court:
All right, call your next witness.

Mr. Gibson:
Mr. Rich.

IRVIN RICH, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Gibson:
Q. Is this Mr. Irvin Rich?
A. That's right.
Q. Where do you live, Mr. Rich?

A. I live in Center Point, Alabama.

Q. Are you employed by the L&N Railroad Company?

A. Yes, sir.

Q. What is your job?

A. Fireman.

Q. Were you also a fireman for the L&N Railroad Company in October, of 1955?

A. Yes, sir.

Q. Do you remember the occasion on Sunday night, the 23rd of October, 1955, when a strike or walkout took place at the Boyles Yard of the L&N Railroad Company?

A. Yes, sir, I remember it.

Q. Were you working in the Yard that night?

A. No, sir.

Q. State whether or not you had occasion on that night to go to the Boyles Yard for any purpose?

A. I had occasion to go from church to the roundhouse to make out a bid on some jobs.

Q. You say you drove over there from church?

A. Yes, sir.

Q. In your automobile?

A. Yes, sir.

Q. Was there anybody with you?

A. My wife and two daughters.

Q. When you got to the L&N premises there, tell the jury where, if anywhere, you parked your automobile?

A. Well, I parked the automobile there by the foot bridge, close to Rex's Barbecue, across the street from Rex's Barbecue.

Q. What did you do then?

A. I went into the roundhouse, not into the roundhouse, but went into the Engine Dispatcher's Office,

to make out these bids for these jobs that were up the next day.

Q. Did you stay in the Engine Dispatcher's place any length of time?

A. Just a few minutes, not too long. I arrived there about 8:30, between 8:30 and 8:35, somewhere, approximately.

Q. After you completed your business there in the Dispatcher's Office, what did you do?

A. I left to go home.

Q. As you went out of the Dispatcher's Office I will ask you to tell the jury whether or not you saw anyone?

A. Yes, sir, I saw three men going towards the roundhouse, in the direction of the roundhouse.

Q. Who were those men?

A. Well, to the best of my ability, as I saw them it was Shorty Parker and Thomas.

Q. Is that Reese Thomas?

A. Yes, sir, and McCutcheon.

Q. Did you say anything to them or they to you?

A. No, sir. No, sir, there wasn't anything said. In fact I don't know whether they saw me or not.

Q. They were going in the direction of the roundhouse?

A. Yes, sir, I saw them from the back, going in the direction of the roundhouse, approximately 50 feet away, I don't know exactly, but that's my estimation.

Q. How long had you known these three men that you named?

A. Well, I have known them for the past 11 years.

Q. Did you recognize them out there that night?

A. Yes, sir, I recognized them.

Q. What did you do then, if anything?

A. I went on home. I was on my way home at the time. I went on and got in my car and went home.

Q. During the progress of the work stoppage or walkout, or strike, did you talk on the telephone at any time with anyone?

A. Yes, sir.

Q. Tell the jury whether or not at any time during the strike you talked to any of the men who are the Defendants in this case?

Mr. Pettus:

We object to that, without any identification, I mean just that general question.

Mr. Gibson:

We will get to that.

Mr. Pettus:

We would like to question him on his voir dire on that matter.

The Court:

The question is whether or not he talked to any of the Defendants?

Mr. Gibson:

Yes, sir.

The Court:

I overrule the objection.

Mr. Gibson:

He can go into that on cross examination.

The Court:
I overrule the objection.

Q. Do you remember the question, Mr. Rich?
A. Yes, sir. I did talk to some one, yes, sir.
Q. To whom did you talk who is a Defendant in this case?

Mr. Pettus:
We object to that, on the ground that the—

The Court:
It is a preliminary question, and I don't know what conversation, what the conversation is going to lead up to. I overrule the objection.

Mr. Pettus:
We except.

A. I talked to Howard Anderson.
Q. Was that a face-to-face conversation?
A. No, sir, that was a telephone conversation.

Mr. Pettus:
We move to exclude any telephone conversation without any further identification.

The Court:
I will permit him to see if he can identify him.

Q. When did that conversation with Anderson take place?
A. Around 1:00 o'clock a. m.
Q. On what day?
A. It was on Tuesday.

The Court:
Did you recognize his voice over the phone?

The Witness:
Not until he told me who he was.

Mr. Pettus:
We object to that.

The Court:
Then did you recognize his voice?

The Witness:
Yes, sir.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Now, Mr. Rich, just relate to the jury as well as you can recall it what was said by you and what was said by Mr. Howard Anderson in that conversation?

Mr. Pettus:
We object to that question, hearsay, incompetent, irrelevant, and immaterial.

The Court:
Overruled.

Mr. Pettus:
We except.

A. He asked me to come to a meeting at Ed Weldon's house at 2:00 o'clock.

The Court:
At whose house?

The Witness:
Ed Weldon, at 2:00 o'clock. And I told him then I was not a member of the Firemen's Organization, that I didn't think that they would want me at the meeting. Therefore I couldn't come. So that was all that was said, and he hung the phone up.

Q. Was there anything said by you to him or by him to you about the purpose of the meeting?
A. I asked him what the purpose of the meeting was and he stated that he didn't know, he thought that it was to line up pickets.

Mr. Pettus:
Now, we move to exclude the answer on the ground it is incompetent, irrelevant, and immaterial. The party on the other end of the line was not properly identified.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Did you have any other conversations by telephone or face-to-face with any of the Defendants in this case during the period of the strike?

A. Yes, sir, I had a conversation on the telephone with another fellow, yes, sir.

Q. Did the caller identify himself to you by telling you what his name was?

A. Yes, sir.

Q. Who did he say he was?

A. O. C. Breedlove.

Mr. Pettus:

We object to that, may it please the Court, and move to exclude his answer.

The Court:

I overrule the objection, if he can identify his voice.

Q. Do you know Mr. Breedlove?

A. Yes, sir, I know him.

Q. How long have you known O. C. Breedlove?

A. About 11 years.

Q. After the caller stated his name was Breedlove, did you recognize his voice?

A. After he told me who he was, I did, yes, sir.

Q. When did that conversation take place?

A. About 11:00 p. m.

Q. On the same day?

A. At night, on the same day.

Q. That was Tuesday I believe you said?

A. Yes, sir.

Q. All right, Mr. Rich, now if you please relate to the jury the conversation you had with O. C. Breedlove as well as you can recall it?

Mr. Pettus:

We object to that.

Q. In the order in which the various things that were said were said as well as you can remember?

The Court:
Overruled.

Mr. Pettus:
We except. On all the grounds last assigned, and we except.

The Court:
Overruled.

A. He said that "This is Breedlove", and he wanted me to come down to the gate, the switchmen's gate. So I told him that I was sorry, that I couldn't come, and he said that I would lose my job. I said "Well, I've done lost my job because I am staying out."

Q. Now, Mr. Rich, was that all that was said?

A. That was all that was said, and he hung up.

The Court:
Where were you, at your home?

The Witness:
Yes, sir.

Q. That was Tuesday night?

A. Yes, sir.

Mr. Gibson:
Take the witness.

Cross Examination.

By Mr. Pettus:

Q. Mr. Rich, how far were you away from the man that you have said is Shorty Parker on the evening of Sunday, October 23?

A. How far I was away from him?

Q. Yes, sir.

A. About 50 feet, approximately.

Q. 50 feet?

A. Approximately.

Q. What time was it at night?

A. I would say it was about 9:50.

Q. About 9:50?

A. Yes, sir.

Q. That is 10 minutes of 10:00?

A. Yes, sir.

Q. Now, where were you when you saw him?

A. I came out of the Engine Dispatcher's Office where they change clothes, out on a little platform, down, going from there, and I saw them. As my eyes glanced across, I saw the three men.

Q. Was this your second trip to the Engine Dispatcher's Office that evening?

A. No, sir.

Q. You testified you just arrived there at 8:30, is that correct?

A. Yes, sir.

Q. And you stayed there from 8:30 until nearly 10:00 o'clock?

A. Yes, sir.

Q. At the Engine Dispatcher's Office?

A. 8:30 until nearly 9:00.

Q. You just testified you saw them at 9:50, is that correct?

A. No, 8:50.

Q. 8:50?

A. 8:50, yes, sir.

Q. And he was about how far away from you?

A. I would say 50 feet.

Q. 50 feet?

A. Approximately, yes, sir.

Q. Where were you standing when you saw him?

A. I was not standing, I was moving, I was coming out, like I said, on the little platform, coming down to go home.

Q. Were you standing in back of any building or anything watching them?

A. No, I came out in front of the building.

Q. In front of the building?

A. Yes.

Q. Well, did he have his back to you when you saw him?

A. Yes, sir.

Q. Was he moving in a different direction from what you were?

A. Yes, sir, he was moving in a different direction.

Q. Did he ever turn his face towards you?

A. No, sir.

Q. So you are identifying him just from looking at his back?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. And it was dark, is that correct?

A. It was dark, yes, sir.

Q. And you are not positive that that was Mr. Parker are you, Mr. Rich?

A. Well from, just like I said, I wouldn't take an oath that it was those boys. Of course, I have been knowing them for some time.

Q. Yes.

A. Knowing and seeing the walk, and everything.

Q. These telephone calls, Mr. Rich, you identified them because some man at the other end of the line gave you a name, isn't that the basis on which you identify them?

A. Yes, sir. I identify them by the voice, after they told me who they were. A lot of times a person not familiar, particularly not using the phone, if someone calls in, unless he tells you who he is sometimes you don't recognize the voice.

Q. Yes. And in this case, unless the men had told you who they were you would not have recognized their voices, would you?

A. That's right. That's correct.

Mr. Pettus:

We move to exclude the testimony as to the telephone calls, just based on simply what someone told him over the phone.

The Court:

I overrule your motion.

Mr. Pettus:

We except.

Q. Mr. Rich, what other business are you engaged in besides railroading?

A. What other business?

Q. Yes, sir.

A. I am not engaged in any other business except I do take contracts. So far as business, my business, I don't have any business establishment. I do building, construction work for different people.

Q. Now, Mr. Parsons that used to be a railroad official here knew about that, didn't he?

A. Well, I don't know that he did, no, sir.

Q. Did he come up there when you were pursuing this other building one day?

A. Yes, sir, he has been around my building, yes, sir.

Q. Mr. Parsons has been transferred out of here now too, hasn't he?

A. He's not here.

Q. He's not here any more, is he?

A. He's not here, no, sir.

Mr. Pettus:

That's all.

Re-Direct Examination.

By Mr. Gibson:

Q. Mr. Rich, at the time the man you identified by his own statement and his voice as O. C. Breedlove, and he asked you to come down to the switchmen's gate, will you tell the jury whether or not he told you what he wanted you to do down there?

A. Well, he told me—

Mr. Pettus:

We object to that, not in rebuttal.

The Court:
Overruled.

Mr. Pettus:
We except.

A. He told me that he wanted me to come down there to help them out, that the switchmen were trying to go in down there.

Q. Did he say what he wanted you to do?

A. No.

Q. About that?

A. No, he just didn't say what for me to do, he just told me to go down there to the gate.

Q. Come down there and help them out?

A. Yes.

Q. That some of the switchmen were trying to go in?

A. That's right.

Q. At the time you saw the three men, H. K. Parker, Reese Thomas, and C. L. McCutcheon on Sunday night, were those three men anywhere close around the washroom, clustered up around the washroom, or were they some distance away?

A. They were a distance away. The one time I saw the three, as I stated before, is when they were going across towards the roundhouse.

Q. And there are some tracks in between where you were and where they were?

A. That's right.

Q. About how many?

A. Oh, it was about three.

Q. They were headed into the Yard, not out of the Yard, when you saw them?

A. That's right, they were headed in towards the direction of the roundhouse.

Mr. Gibson:
That's all.

The Court:
All right.

Mr. Pettus:
That's all.

The Court:
Do you have any further use for this witness?

Mr. Gibson:
May this witness be excused?

Mr. Pettus:
So far as we are concerned.

The Court:
All right, you may be excused.

(Witness excused.)

Mr. Simpson:
Call Mr. Saylor.

E. D. SAYLOR, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:

Q. Will you state your name to the jury, please, Mr. Saylor?

A. E. D. Saylor.

Q. Where do you live?

A. Gardendale, Alabama.

Q. Who do you work for?

A. L&N Railroad.

Q. What do you do?

A. Fireman.

Q. Do you belong to any Labor Organization?

A. Yes, sir.

Q. Which one?

A. Brotherhood of Locomotive Firemen.

Q. Brotherhood of Locomotive Firemen?

A. Firemen and Enginemen.

Q. Enginemen and Firemen?

A. Yes, sir.

Q. Or Firemen and Enginemen?

A. Yes, sir.

Q. Were you a member last October?

A. Yes, sir.

Q. Were you here on Sunday, the 23rd, when that strike started that happened in October?

A. Part of the day, yes, sir.

Q. Were you around the L& N plant, L&N Yards at Boyles that day?

A. I got off about 4:00 o'clock I believe 3:30 or 4:00 that morning and went home.

Q. I see. Were you around there that night?

A. No, sir.

Q. Were you around there Monday?

A. No, sir.

Q. Did you have any communication with any of the Defendants here during the course of that strike, Sunday morning, Tuesday or Wednesday?

A. Well, sir, I went fishing Sunday, came back, went to the river and came back Tuesday night about dark, a little after dark. And my wife told me that someone had been calling for me. And I said "Who is it?" She said "I don't know.'

So there were a number there and I called it, and someone answered, and they wanted me to go down to the Railroad. That was Tuesday.

Mr. Taylor:

Just a minute. We object to this conversation. He hasn't even identified who he was talking to.

The Court:

There has been no identification yet.

Q. Go ahead and finish, please, sir.

A. That was Tuesday, Tuesday night. I didn't go. I believe I said I went Tuesday night, but it was Wednesday night I went down there. And Tuesday night they called me, and I didn't go down until Wednesday afternoon at 4:00 o'clock, I believe.

Q. You went down Wednesday afternoon at 4:00 o'clock?

A. Yes, sir.

Q. What did you do when you went down?

A. Well, I really didn't do anything.

Q. What were you there for?

A. They told me to stay at a road there going into the Railroad Yard and to see who goes in and who comes out. That was my instructions.

Q. How long were you to sit there?

A. I stayed there until about 7:00 o'clock.

Q. Beginning what time?

A. I believe it was 4:00 o'clock.

Q. 4:00 until 7:00?

A. Yes, sir.

Q. Who did you relieve there on that job?

A. I honestly don't know. The boy that was there, I do not know him, but I believe it was Mr. Stallard.

Q. Mister who?

A. Mr. Stallard.

Q. Who relieved you?

A. Well, a fellow—and Mr. Breedlove came by about 7:00 o'clock and told me to go home.

Q. Told you to go home?

A. Yes, sir.

Q. That was on what day?

A. That was on Wednesday evening.

Q. On Wednesday evening Breedlove came by and relieved you of duty?

A. About 4:00 o'clock.

Q. About 4:00 o'clock, and told you to go home?

A Yes, sir.

Q. All right now, do you know who the gentleman was—

The Court:

It is not shown yet that he knew who it was that made that call.

Mr. Simpson:

I know, but I just showed that he went on picket duty, or went on this sitting job, regardless of who it was.

The Court:

All right.

Mr. Simpson:

Now, I am going back to try to show if he knows who put him on that job.

The Court:

All right.

Q. Did you recognize the voice that talked to you over the telephone?

A. Well, I took it to be Mr. Breedlove.

Q. Well, was that your best judgment?

A. Yes, sir. I couldn't swear to it.

Q. How long have you known Mr. Breedlove?

A Oh, possibly 10 years.

Q. Are you familiar with his voice; you have talked to him?

A. Fairly so, yes, sir. I have not talked to him over the telephone though before.

Q. You answered this number?

A. Yes, sir.

Q. That was left there for you?

A. That's right.

Q. From your acquaintance with Mr. Breedlove's voice over the years, it was your judgment at the time that it was Mr. O. C. Breedlove talking to you?

A. That's right.

Q. As a matter of fact, did he tell you who he was?

A. Well, now, I really don't remember about that.

Q. Whether he called his name or not?

A. No, sir, I just couldn't give you that.

Q. It is your best judgment it was Mr. Breedlove that you were talking to?

A. Yes, sir.

Q. And told you when to report?

A. Yes, sir.

Q. What did he call the duty that he wanted you to do?

A. Well, now, I don't remember fully about that, but he said "We just want to know who goes in and who comes out."

Q. Did you see anybody go in?

A. Not a soul.

Q. Not a soul?

A. No, sir.

Q. All right.

A. No, sir.

Mr. Simpson:

You can have the witness.

Cross Examination.

By Mr. Pettus:

Q. You didn't make any report to anybody about what you saw, did you?

A. No, sir.

Q. You just sat down there?

A. Yes, sir.

Q. Were you just on the public highway?

A. Well, no, I don't believe it is a public highway, it is more of an alley.

Q. It is more of an alley, is it?
A. Going into the Yards.
Q. Where you could watch the Yard?
A. Yes, sir.
Q. You were not on Company property, were you?
A. No, sir, no, sir.
Q. You just sat down there for about 3 or 4 hours, and nothing happened, is that right?
A. Not a thing, no, sir.
Q. I see.
A. I got very lonesome, in fact.
Q. Now, this telephone call that you got, are you able to identify the voice of your own knowledge as being that of Mr. Breedlove?
A. I couldn't hardly swear to it because that would be kind of—you know, you think you recognize a voice many times when you don't in reality.
Q. It is possible that it was somebody else that called you?
A. Yes, sir, it could have been an imitation or someone mimicking, yes, it could have been. I say that in all probability it could have been.

Mr. Pettus:
All right, thank you.

Re-Direct Examination.

By Mr. Simpson:
Q. It was Mr. Breedlove though that came along and relieved you of duty?
A. Yes, sir.

Mr. Simpson:
That's all. Come down. Call Mr. Chapman. May Mr. Saylor be excused from further attendance?

Mr. Pettus:
We can excuse him.

The Court:
Unless there is objection you may be excused.

(Witness excused.)

P. O. CHAPMAN, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:
Q. Will you please state your name?
A. Paul O. Chapman, or P. O., whichever way you have got it there.
Q. How is that?
A. P. O. Chapman.
Q. Where do you live?
A. 3810 40th Avenue North.
Q. How long have you lived in Birmingham?
A. I have lived in Birmingham, let's see, since 1939.
Q. And who do you work for?
A. L&N Railroad.
Q. What sort of work do you do?
A. Locomotive fireman.
Q. You are a fireman?
A. Yes, sir.
Q. Do you belong to any Labor Organizations?
A. I belong to the Firemen's Organization.

Q. Brotherhood of Locomotive Firemen and Enginemen?

A. That's right.

Q. How long have you belonged to them?

A. Well, about two months this last time.

Q. Did you belong to them before?

A. Yes, sir.

Q. All right. Do you recall Sunday, October 23, last year, when a short strike occurred out here at the L&N Yards at Boyles?

A. Yes, sir.

Q. Where were you that Sunday night?

A. On Sunday morning I was called out for a 7:55 switch engine and worked until 7:20 that afternoon, on that particular day.

Q. You got off at 7:20?

A. Yes, sir.

Q. Where did you go?

A. I went home.

Q. And did you come back over there in the neighborhood of the Yards later that night?

A. Well, me and my wife went down on 31 Highway to take supper out there at a Drive-In out there. She likes to take her meals out there, and she wanted to go out there that night to take supper.

Q. Did you ever get back in the neighborhood of the Rex's Barbecue there at the Master Mechanic's gate or roundhouse gate?

A. I did that particular night, yes, sir.

Q. What time did you get there?

A. It was around between 8:30 and 9:00 o'clock the best I recall.

Q. 8:30 to 9:00 o'clock?

A. Yes, sir.

Q. Did you see anybody there that you knew that Sunday night?

A. Well, I expect I did, but I don't recall just offhand who it was now, it's been a good while ago.

Q. Did you have any conversation with anybody there about picket duty that night?

A. I spoke to my Local Chairman, I asked him what the situation was, and he said he didn't know until he got a long-distance call from higher up.

Q. Did you have any conversation there with anybody about picket duty that night?

A. I probably did, but I don't recall just now who it was.

Q. Do you know Mr. Breedlove?

A. Yes, sir.

Mr. Pettus:

We object to leading him, may it please the Court.

The Court:

Overruled.

Q. Did you do any picket duty?

A. Yes, sir, I did.

Q. When did you go on picket duty?

A. About 10:00 or 10:30 that night, the best I remember.

Q. That is Sunday night?

A. Yes, sir.

Q. Well, do you remember who assigned you to the picket duty that night?

A. To be certain, no, sir, I don't.

Q. Have you any recollection about it?

A. I remember talking to some of the men down there, but I couldn't recall just now who it was.

Q. Did somebody assign you to picket duty?

A. Well I— they might have, but I more or less figured it was my duty, more or less, to go on picket duty. I don't recall just now who it would have been.

Q. Well, why was it your duty; because you were a member of the Firemen's Organization?

A. Yes, sir.

Q. All right, now, then were did you go on duty as a picket?

A. At what they call the powerhouse gate, next to the parking lot there.

Q. Powerhouse gate?

A. Yes, sir.

Q. Now that is the gate nearest towards Birmingham in the Yards, isn't it?

A. Yes, sir.

Q. Who else went on duty there with you?

A. A fireman named W. T. Owens, the best I recollect.

Q. Where did you all stand?

A. Right there about, I guess as far as from here to the back window from the gate there, built up a fire there.

Q. Built you up a fire about as far as across this Courtroom, the length of this Courtroom?

A. Approximately that distance.

Q. From the Company gate?

A. Yes, sir.

Q. You were out there between the road, the Vanderbilt Road and the Company's gate?

A. Something like that, yes, sir, Company's fence.

Q. How long did you stay there?

A. I stayed there around until between 6:30 and 7:00 o'clock next morning.

Q. How long did Mr. Owens stay there with you?

A. He left there before I did. I don't know exactly what time he did leave

Q. All right. Who relieved you?

A. That's another question I can't answer offhand.

Q. Did somebody relieve you?

A. Evidently they did, but I can't recall who it was now.

Q. It is your best recollection somebody came and relieved you, is that right?

A. I wouldn't have left the post without somebody representing the firemen being there.

Q. You wouldn't have left, you know, unless there had been somebody there to take your place, is that right?

A. Yes, sir.

Q. But you remember Mr. Owens had already left before you?

A. Yes, sir.

Q. Now, you can't tell us who it was that took your place as a picket there at that gate?

A. That has been right at eleven months.

Q. That's right.

A. That's a long time to remember something.

Q. I know it.

A. How come me to remember Owens, we left Rex's Barbecue together.

Q. To go down and take your place as pickets?

A. Yes, sir.

Q. Do you remember who you relieved, if anybody, or were you the first picket that took up that place?

A. I was the first picket.

Q. When you got off picket duty there at 6:30, you say about 6:30 in the morning, you say it was about 6:30?

A. Between 6:30 and 7:00 o'clock.

Q. Did you go right straight home?

A. My wife, she was working at the Humming Bird Grill there about one block north of there at that time. I went by and ate breakfast and went on home and went to bed.

Q. Now, did you go in the Yard with anybody that day?

A. Yes, sir.

Q. What time of day was that?

A. Now, wait a minute, I'm about to get my own self crossed up. That was after 7:00 o'clock. Some of the car men, I don't know exactly who they were now, wanted to go through there and see was there anybody in there.

Q. They wanted to go through the Yards to see if anybody was working?

A. Yes, sir.

Q. And was that—

A. They wanted a respresentative of the Firemen's Organization to go with them.

Q. They wanted a fireman to go with them?

A. Yes, sir.

Q. Did you go with them?

A. Yes, sir.

Q. And you went in as a representative of the Firemen?

A. Yes, sir.

Q. For what purpose?

A. To see if anybody was working.

Q. To see if there was anybody working in the Yard?

A. Yes, sir.

Q. Just tell the jury whether that was immediately after you got off of picket duty at 6:30?

A. Mr. Owens was still there on the gate when I left. He left at the time I went in with those men and came back.

Q. Where did you go? First I will ask you how many men were in this gang that went through the Yards?

Mr. Pettus:
We object to the use of that word "gang."

Mr. Simpson:
Well, I don't mean to—

The Court:
Overruled.

Mr. Pettus:
We except.

Q. What did you call it, crowd?

A. That's what I would call it.

Q. All right, call it a crowd. How many were in this crowd of men that went through the Yard?

A. I guess there was between 18 and 20.

Q. 18 or 20?

A. Something in the neighborhood of that. I don't remember the approximate number.

Q. Where did they enter the property, the L&N Yards?

A. At the powerhouse gate.

Q. At the powerhouse gate?

A. Yes, sir.

Q. Where did you go?

A. We went up there to the powerhouse and split up into two different sections.

Q. All right.

A. One section went in the north part of the Yard, and we went in the south part of the Yard, I went in the south part of the Yard with the others.

Q. The crowd you went with went to the south part?

A. Yes, sir.

Q. How far down did you go?

A. Went to the south Yard shack, cut across the main line, came back up to the Yard Office, and came back out the gate.

Q. Did you see the other crowd that went in when they came out?

A. No, they had done come back when we got there.

Q. You don't know where they went out of the Yard?

A. No, sir.

Q. How is that?

A. No.

Q. You don't know where they went out?

A. No.

Q. Now, that was Monday morning?

A. Yes.

Q. Then you went and got your breakfast and wife and so forth?

A. Yes, sir.

Q. You had forgotten that part of it, had you?

A. Like I say, it's been so long.

Q. I realize that.

A. I had to recall back before I could recollect and get that straight off.

Q. I realize that?

A. Yes, sir.

Q. Now that night what did you do, did you go back on picket duty Monday night?

A. I went back to the same post, yes, sir, Monday night.

Q. You took up your post there at what time?

A. It was around, the best I remember, around 8:00 o'clock.

Q. Around 8:00 o'clock?

A. Yes, sir.

Q. Is that P. M.?

A. Yes, sir.

Q. Who did you relieve, who was holding the post when you got there?

A. I don't know, sir, now.

Q. Do you know that there was somebody holding it that you did relieve?

A. Yes, sir, I do remember, there probably was. In fact I know there was, but I don't recollect who it was now.

Q. Was it one of the firemen?

A. Yes, sir.

Q. All right. And you stayed there until what time that Monday night?

A. Well, right close to between 6:30 and 7:00 o'clock next morning.

Q. You stayed there all night again?

A. Yes, sir.

Q. How is that?

A. Yes, sir.

Q. When you shake your head that way, we don't know what you mean by it.

A. Yes, sir.

Q. You stayed there all night again Monday night?

A. Yes, sir.

Q. Who relieved you next morning, the next morning Tuesday?

A. There was someone, but I don't recall who it was.

Q. One of the firemen?

A. Yes, sir.

Q. One of the firemen relieved you Tuesday morning?

A. Yes, sir.

Q. Where did you go then?

A. I went down to the cafeteria, had my breakfast and went on home and went to bed.

Q. All right now, you slept most of that day, did you?

A. Yes, sir.

Q. What did you do the next morning Wednesday? Do you remember what time you got up Wednesday?

A. I slept until after dark Wednesday afternoon.

Q. All right. Did you do all of your picket duty out there at the Yards or did you get sent somewhere else?

A. Well, I did do about 2 or 3 hours, maybe less than that, at Morris Avenue and 20th Street the last night, the night that the thing was straightened up to go back to work.

Q. That was Wednesday night?

A. Yes, sir.

Q. Who told you to go down there?

A. Offhand I can't recall it.

Q. You can't recall?

A. No, sir.

Q. To refresh your recollection, was it Mr. Howard Anderson that told you to take up that post?

A. It could have been, but I wouldn't swear to it.

Q. Who did you relieve down there at Morris Avenue and 20th Street? You remember walking up there and relieving a man, don't you?

A. There was somebody there, but I can't recall now who it was.

Q. To refresh your recollection, wasn't that Mr. Grissom?

A. (No response.)

The Court:

If you have no recollection just state so. Mr. Chapman.

The Witness:

I don't remember, to tell you the truth.

Q. You can't recall, but you did relieve some fireman there?

A. Yes, sir.

Q. And how long did you stay there?

A. Well, I got there around, I guess around 8:00 o'clock.

The Court:

Was this Tuesday evening or Monday evening?

The Witness:

That was Wednesday afternoon.

Q. Wednesday afternoon?

A. Wednesday afternoon.

The Court:

I see, Wednesday afternoon?

The Witness:
Yes, sir.

Q. All right.

A. Somebody come around there and give me notification to come around to the Chief Special Agent's Office, Mr. Camp, that they had had a meeting somewhere up there in some suite, some hotel here in town, and they come to an agreement to go back to work. I went on around to Mr. Camp to get the official notification of it.

Q. All right. During the night of Tuesday night that you were out there all night at picket duty at the powerhouse gate, I will ask you whether or not someone drove up to see if somebody was on duty, to check up with you, and see that you were on your post?

A. Somebody could have seen about it. Best I remember somebody came by there. I don't recall who it was now.

Q. To refresh your recollection was it Mr. Howard Anderson that drove up there about 8:00 o'clock in the morning to see if you were on your post of duty on Tuesday night?

A. I don't know. After staying up that many hours, it could have been and it couldn't have been, I couldn't swear to it.

Q. Did you ask him to get somebody to relieve you, that you were mighty sleepy?

A. Whoever the party was, I did.

Q. You remember asking him to get somebody to relieve you?

A. I spent 12 hours there.

Q. That's right.

A. The second night, and third night in a row.

Q. Now, you remember the incident, don't you?

A. Yes, sir, I remember the incident.

Q. You are just not able to tell these gentlemen who that individual was that came up to inspect you on your post there?

A. Not to remember it eleven months. That's a pretty good while to remember that.

Q. Well, that has about got out of your mind?

A. Yes, sir.

Q. And did he get somebody to relieve you?

A. No, sir.

Q. And you had to stay there until 6:00 o'clock?

A. Yes, sir.

Q. Is that right?

A. Somebody showed up around between 6:30 and 7:00 o'clock that morning.

Q. Somebody did show up to take your place on the picket line?

A. Yes, sir.

Q. Did you see anybody going in or coming out of the Yard while you were on picket duty there?

A. No, sir.

Q. Those two nights?

A. No, sir.

Q. What?

A. The first night, there was only one night that I saw anybody, or early Monday morning, the only time that I saw anybody come there to try to go in.

Q. That was when that crowd of men, about 25 you said, went in and split up into two parts?

Mr. Pettus:

We object to that, it is a misstatement. What he said was about 20.

Mr. Simpson:
Let's not be technical about it.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. How many were there?
A. Well, just to give you an exact count I couldn't do that to save my life.
Q. What is your recollection about how many men came in, the whole crowd?
A. Around 18 or 20.
Q. Around 18 or 20?
A. Yes, sir.
Q. What were your instructions as a picket there to do?
A. Just ask the men not to go to work if they would.
Q. Keep anybody from going in there and going to work?

Mr. Pettus:
Now, we object to that as a misstatement of what the witness just said. He didn't say anything like what Mr. Simpson said.

The Court:
I sustain the objection.

Mr. Pettus:
It is his witness, on direct examination.

Mr. Simpson:
All right.

Q. Go ahead.
A. They said not to try no rough stuff or nothing, just ask them politely, we would appreciate it if they wouldn't go in and go to work.
Q. Tell them you would appreciate it if they wouldn't go in and go to work?
A. Yes, sir.
Q. And the man that put you out there, whether it was Mr. Breedlove or Mr. Anderson gave you those instructions?
A. They didn't want no rough stuff.
Q. They didn't want any rough stuff?
A. I wouldn't have it nohow in the first place.
Q. What?
A. I don't see having rough stuff to start with.
Q. You are not one of the rough stuff boys, are you?
A. No, sir.
Q. You didn't want any rough stuff so far as you were concerned?
A. Well, my daddy taught me not to fight if I could help it.
Q. Well, there had been a lot of rough stuff on the picket lines out there just before that, hadn't there?

Mr. Pettus:
I object to that.

A. I never had seen nothing.

The Court:
I sustain the objection.

Mr. Pettus:

Don't answer. The Judge sustained the objection.

The Court:

I sustain the objection.

Mr. Simpson:

All right.

Q. What was the reason that you were to give men to keep them from going in there? What was the argument that they told you to give?

A. They didn't say give no argument.

Q. Just ask them not to go in?

A. Yes, sir.

Q. There wouldn't be any argument about it, it was just a question of asking them not to go in?

A. That's right.

Q. Is that right?

A. Yes, sir.

Q. If they went in anyway were there any instructions about your reporting that to somebody?

A. No, sir.

Q. You were to observe who it was though, weren't you, find out who it was?

A. Well, if I knew who it was. Of course, there is a lot of men in the shop I couldn't call their names if they were going to hang me right now.

Q. They asked you to come up to the gate where the switchmen were wanting to go in and they were afraid they were going to break over the line and go in up there?

A. No, sir.

Q. They didn't ask you to go up there and help hold that gate?

A. No, sir.

Mr. Simpson:

I believe that's all. You can have the witness.

Cross Examination.

By Mr. Pettus:

Q. Mr. Chapman, do you know a Mr. Robey?

A. Yes, sir.

Q. How did you happen to meet him?

A. A Special Agent came to my house and said that the Assistant Superintendent, Mr. Parsons, wanted to see me. He come out there in his car and brcught me to town, in front of the Comer Building, and said it would be ir 1605 Comer Building.

Q. Where was Mr. Parsons' office at that time?

A. Second floor of the Superintendent's Building on Morris Avenue.

Q. On Morris Avenue?

A. Yes, sir.

Q. Is that three or four blocks from the Comer Building?

A. Yes, sir.

Q. When you got up there to Mr. Robey's office did you see Mr. Parsons?

A. No, sir.

Q. Did you ever see Mr. Parsons on that occasion?

A. No, sir.

Q. Did Mr. Robey talk to you about this case?

A. Yes, sir.

Q. Did he say he was employed by the L&N?

A. I wouldn't state for sure, but I believe he did.

Q. Did he tell you he was an ex-FBI man?

A No, he never stated that. never did make that statement to me.

Q. Mr. Chapman—

A. Yes, sir.

Q. —was there anyone that spent any of these nights out there with you, any other individual from any other crafts or any other firemen? I mean I am not asking the names, but were they out there or were you by yourself?

A. Well, of course, a place like that ordinarily there would be a big crowd maybe up until 12:00 or 1:00 o'clock. From about 1:00 or 1:30 approximately until daylight I wouldn't see a soul hardly.

Q. You would just stand out there?

A. Just be out there, right.

Q. Now, this Monday morning that they asked you to go, you say that this was a bunch of car men?

A. It was car men and I imagine some transportation men too, I don't know.

Q. Car men and transportation men?

A. Of course, out of a big bunch like this together, you can't put your finger on every one of them.

Q. They said that they wanted a fireman to go along into the Yards with them, is that right?

A. Yes, sir.

Q. Did you recognize any of that group, of course, other than yourself, as being a fireman?

A. No, sir.

Q. In other words, you were the only fireman in that group of 18 or 20 men?

A. Yes, sir.

Q. All they did was just go through the Yards and then come out?

A. Come out.

Q. Is that right?

A. Yes, sir.

Mr. Pettus:

That's all.